

# **DEPARTMENT OF PERSONNEL**

## **4 CCR 801 PERSONNEL BOARD RULES AND PERSONNEL DIRECTOR'S ADMINISTRATIVE PROCEDURES**

The purpose of Personnel Board Rules (indicated by a code beginning with R) and Director's Administrative Procedures (indicated by a code beginning with P) is to establish simple and concise statewide human resource requirements that apply throughout the state personnel system. Rules adopted by the Board and procedures adopted by the Director require the formal rulemaking process defined in the Administrative Procedures Act. Operational detail and process and local practice are purposely excluded from this document.

Unless otherwise noted, the rules and procedures were effective December 31, 1998. This version reflects adoption of Director's Procedures P-4-15 and P-4-17 effective December 1, 2004.

### **Preamble**

Unless otherwise noted, the following State Personnel Board rules were adopted by the State Personnel Board on October 20, 1998, pursuant to a Statement of Basis and Purpose dated October 20, 1998.

R-1-1 through R-1-16  
R-2-1  
R-3-1, R-3-2  
R-4-1 through R-4-13  
R-6-1 through R-6-12  
R-7-1 through R-7-24  
R-8-1 through R-8-66  
R-9-1 through R-9-9  
R-12-1 through R-12-31

Such rules are effective December 31, 1998.

Unless otherwise noted, the following State Personnel Director's Administrative Procedures were adopted by the State Personnel Director on October 26, 1998, pursuant to a Statement of Basis and Purpose dated October 26, 1998.

P-1-1 through P-1-7  
P-2-1 through P-2-11  
P-3-1 through P-3-52  
P-4-1 through P-4-23  
P-5-1 through P-5-38  
P-6-1 through P-6-3  
P-8-1 through P-8-23  
P-9-1 through P-9-3  
P-10-1 through P-10-13  
P-11-1 through P-11-30  
P-12-1 through P-12-31

Such procedures are effective December 31, 1998.

## Chapter 1 Organization, Responsibilities, And Ethics

### General Principle

- R-1-1. The purpose of the State Personnel Board (hereafter in rules “Board”) rules and State Personnel Director’s (hereafter in rules “director”) administrative procedures is to create a sound system of human resource management. This system recognizes employee rights, values the differing roles and relevant contributions of various stakeholders, allows reasonable discretion for agencies to establish their own operating practices, and ensures Board rules and director’s procedures complement each other. It is the intent of the Board and director to adopt the minimum amount of provisions necessary to ensure the least cumbersome process possible for administering the state personnel system while meeting legal requirements.

### State Personnel Board

- R-1-2. The Board shall establish a cost-effective election process for those members elected by state employees. This process shall comply with the constitution and C.R.S. 24-50-103.
- R-1-3. The Board administrator, or other person with written delegation, is the agent for service of process for any action involving the Board.
- R-1-4. Unless otherwise ordered, **all materials** to be considered by the Board at its monthly meeting must be received in the Board’s office at least 12 calendar days before the meeting. The party must provide the original and eight copies of all materials to be considered by the Board, other than those specified in R-8-65. (3/30/03)

### State Personnel Director (hereafter “director”)

- P-1-1. The director, under a current written Delegation Agreement, may delegate certain director’s powers to an appointing authority. Such delegated power is discretionary and subject to director’s review. The director’s powers that shall not be delegated outside the Department of Personnel are specified in law and by the director.
- P-1-2. The director may delegate any and all powers, duties, and functions to the Division of Human Resources in the Department of Personnel. (7/1/02)

### Appointing Authority

- R-1-5. Executive directors of principal departments and presidents of institutions of higher education (hereafter in rules “department directors”) are appointing authorities for their own offices and division directors. Division directors as defined by law are appointing authorities for their respective divisions. An appointing authority may delegate any and all human resource functions, including the approval of further delegation beyond the initial designee. In the area of corrective, disciplinary, or other actions which have an adverse affect on base pay, status, or tenure, each agency must establish a written document specifying the appointing authority for each individual employee and this information must be made available to the employee. (1/1/00)
- R-1-6. Appointing authority powers include, but are not limited to: hiring and evaluating performance; determining the amount and type of any performance award; defining a job; administering corrective/disciplinary action; determining work hours and safe conditions and tools of employment; identifying and administering layoffs; and, accountability for any other responsibilities in rule and procedure.
- R-1-7. Appointing authorities have a duty to orient employees to the work place, including communicating requirements set by law, rule or procedure, executive order, and local department practice.

- R-1-8. All appointing authorities, managers, and supervisors are accountable for compliance with these rules and procedures and state and federal law, and for reasonable business decisions, including implementation of other policy directives or executive orders.

### **Employee Activities**

- R-1-9. Employees are required to know and adhere to personnel rules and procedures, laws, and executive orders governing their employment. Agencies are required to make those rules, procedures, laws, and executive orders available to employees. (3/30/03)
- R-1-10. No employee is allowed to engage in any outside employment or other activity that is incompatible with the duties and responsibilities of the state position, including any business transaction, private business relationship, or ownership. The employee is not allowed to accept outside compensation for performance of state duties. This includes acceptance of any fee, compensation, gift, reward, gratuity, expenses, or other thing of monetary value that could result in preferential treatment, impediment of governmental efficiency or economy, loss of complete independence and impartiality, decision making outside official channels, disclosure or use of confidential information acquired through state employment. Incompatibility includes reasonable inference that the above has or may occur or any other adverse effect on the public's confidence in the integrity of state government.
- A. If the employee receives any such form of compensation that cannot be returned, it is to be immediately turned over to the appropriate state official as state property except for the following. The employee may accept awards from non-profit organizations for meritorious public contributions. Honoraria or expenses for papers, demonstrations, and appearances made with approval of the appointing authority may also be kept if it occurs during a holiday, leave without pay, annual leave, a scheduled day off, or outside normal work hours.
- R-1-11. Employees may engage in outside employment, with advance written approval from the appointing authority. The appointing authority shall base approval on whether the outside employment interferes with the performance of the state job or conflicts with the interests of the state, including raising criticism or suspicion of conflicts. (3/30/03)
- R-1-12. It is the duty of state employees to protect and conserve state property. No employee shall use state time, property, equipment, or supplies for private use or any other purpose not in the interests of the State of Colorado.
- R-1-13. Employees may participate in political activities subject to state and federal laws. No state time or property may be used for this purpose.
- R-1-14. Employees have the right to associate, self-organize, and designate representatives of their choice. Membership in any employee organization or union is not a condition of state employment. No employee may be coerced into joining or not joining and solicitation of members shall not occur during work hours without the approval of the appointing authority. The employee's representative may confer, with prior consent from the supervisor, on employment matters during work hours. Such conferences should be scheduled to minimize disruption to productivity and the general work environment. A supervisor's consent shall not be unreasonably withheld.
- R-1-15. An employee may voluntarily and knowingly waive, in writing, all rights under the state personnel system, except where prohibited by state or federal law.

### **Records**

- R-1-16. The Board and the director shall maintain records of personnel activities that have legal, administrative, or historical value in accordance with statute. Legal value is defined as a Board appeal record less than 20 years old or the statement of basis and purpose for a rule or procedure that is in effect or was in effect during the past five years. Administrative value is defined as a record

that is less than five years old and summarizes agency cost efficiencies, including staffing and workload statistics. Historical value is defined as a record documenting a major change in the function of the Board or the Department of Personnel.

- P-1-3. Departments shall maintain official records in written or electronic form. Access to records is governed by C.R.S. 24-72-201 et. seq. Each department shall have an authorized records custodian who is accountable for the maintenance, access and confidentiality, and disposition of all records required by state and federal law. The Division of Human Resources shall have access to records required for the monitoring of delegated authorities and other official duties. (7/1/02)
- P-1-4. When an employee transfers or reinstates to a different department, all official employee records shall be forwarded to the new department within 10 business days. Failure to forward these records may result in liability for violation of any applicable laws, rules, or procedures. (7/1/02)
- P-1-5. Official Personnel File. Each employee's official personnel file shall include the following and be retained permanently: a separate record of all employment actions; most current application information; corrective/disciplinary action information unless rescinded by the Board or further appeal or removed by the appointing authority; final annual performance evaluations for at least the past three years; grievance and performance management review process information; letters of recommendation, reference, or commendation as requested; and, any other information desired by the appointing authority. An employee shall be given a copy of any information placed in the personnel file, except for reference checks. (5/2/04)
- P-1-6. Medical Records. Any medical information on the employee or a family member shall be maintained in a separate, confidential medical file with limited access in accordance with law.
- P-1-7. Examination Records. Examination records shall be kept for two years after expiration of the eligible list, except when notified of a charge of discrimination. In such a case, the record is maintained until the charge is resolved. The content of examination records must include all related information up to the establishment of the eligible list.

### **Human Resource Innovation Programs**

- R-1-17. A description of each Human Resource Innovation Program (HRIP) will be submitted by each department director to the Board or director at 1120 Lincoln Street, Suite 1420, Denver, CO 80203, commensurate with the implementation of each HRIP. The description shall indicate the following: (2/1/01)
  - A. in developing the HRIP, input was obtained from both management and non-management employees in the agency; and,
  - B. the HRIP complies with the Colorado Constitution, statutes, Board rules and director's procedures. (12/31/03)

The Board shall forward HRIPs within the director's jurisdiction to the director. After review, the director will issue a written consultation. The Board will review each HRIP within the Board's jurisdiction at the next regularly scheduled public board meeting and issue a written consultation.

The department director is responsible for updating the description and submitting any modifications or revisions of the HRIP to the Board or director commensurate with such changes.

## **Chapter 2    Jobs**

### **Job Evaluation System**

- P-2-1. The director shall establish standards regarding the creation and maintenance of the job evaluation system(s) and allocation of positions, including subsequent allocation appeals, based on generally accepted techniques and standards in the profession which are uniformly applied to similarly situated employees.
- P-2-2. System maintenance studies create, amend, or abolish classes and/or include pay grade assignments. A study may include the review of all affected positions for placement in the proper new class. No allocation or appointment may be made to a proposed class until it is approved as final on a date determined by the director. The results are not appealable but are subject to “meet and confer” if requested.
- P-2-3. Changes from system maintenance studies shall be published as proposed. Appointing authorities are responsible for the timely distribution of this information.
- R-2-1. Examination (“Employment and Status” chapter) and layoff (“Separation” chapter) rules do not apply to class placement as part of system maintenance studies.

### **Individual Position Review**

- P-2-4. New positions must be allocated to the proper class before any further personnel action is taken.
- P-2-5. The director, or a delegated authority, may request a job description and evaluate a position at any time to determine the proper class.
- P-2-6. An official job description and written request for an evaluation must be submitted when permanent and substantial changes have been made to the position. Absent extenuating circumstances, the appointing authority must submit the written request to the department’s personnel office within 12 months. (7/1/02)
- P-2-7. Positions shall be reviewed as expeditiously as possible according to the department’s established procedures and practices. If the evaluation takes longer than 12 months from receipt by the proper evaluator and the position is allocated upward, the department must pay the difference in base pay for the period beyond the 12 months. (7/1/02)
- P-2-8. If a filled position is allocated to a lower pay grade, the affected employee in the position may appeal to the director in accordance with the “Dispute Resolution” chapter. If the employee’s appeal is successful, the effective date is the date of the original allocation decision.
- P-2-9. The effective date of an allocation for a filled position shall be after completion of the selection process. Vacant positions are effective when the allocation decision is made.
  - A. If a filled position is allocated upward, an appointment shall be made in accordance with selection provisions. If the incumbent does not qualify or is not appointed, the “Separation” chapter applies.
  - B. If a filled position is allocated downward, the following applies:
    - 1. a qualified certified or probationary employee is permitted to voluntarily demote to the position. The certified employee will be offered, in writing, the choice of the voluntary demotion or retention rights. If there is no response by the specified date in the written offer, the employee is deemed to have accepted the demotion and

- waived retention rights. Only after the election is made to exercise retention rights will the certified employee be processed under the "Separation" chapter, including notice of specific retention rights.
2. a conditional employee may revert to a position in a class in which certified. If not certified in another class, but qualified for the new class and no eligible list exists, the employee may be conditionally appointed to the position.
  3. a provisional employee may be appointed to the position if qualified and no employment list exists.
- C. If a position is allocated to a different class with the same grade maximum, the employee who is qualified shall be transferred. If the incumbent is not qualified, refer to the layoff section of the "Separation" chapter. (9/1/01)

### **Senior Executive Service (SES)**

P-2-10. The senior executive service is an alternative performance-based pay plan available for employees in positions that are in the management class and are responsible for directly controlling, through subordinate managers, relatively large or important segments of a principal department, including the acquisition and administration of human, fiscal, operating, and capital resources, and direction and guidance of significant programs, projects, and public policy development. (5/30/03)

P-2-11. Repealed 5/30/03.

- A. The director, upon the request of a department director, shall review any position to determine whether it should be included in the senior executive service. The director's decision to place a position into, or remove a position from, the senior executive service is final and not subject to appeal. (5/30/03)
- B. Each department, excluding institutions of higher education, shall be authorized one senior executive service position for each 100 classified positions in the department, up to a maximum of 15 positions for each department. The director may, upon good cause shown, authorize additional positions, provided the total number statewide at any time does not exceed 125. (5/30/03)

P-2-12. It is not considered a promotion when an employee's current position is approved for and moved into the senior executive service. No employee shall be required to accept a senior executive service pay plan with respect to his or her current position. All provisions of the rules and administrative procedures apply to employees in the senior executive service unless specifically noted otherwise. (5/30/03)

## **Chapter 3 Compensation**

### **General Principles**

- R-3-1. The Department of Personnel shall establish procedures governing compensation for the state personnel system. Every employee shall be compensated within the pay grade assigned to a class.
- R-3-2. Pay grades shall reflect prevailing labor market compensation and any other pertinent considerations. In no case shall an individual employee's base pay be less than the minimum of a grade or exceed a statutory lid.
- P-3-1. Compensation practices shall provide for equitable and fair treatment of similarly situated employees.

### **Annual Compensation Survey**

- P-3-2. The Department of Personnel shall conduct the annual compensation survey. The director shall establish and publish the distribution of annual compensation changes among salaries and group benefit contributions, which shall be effective as provided by law. (5/2/04)
- P-3-3. When upward pay grade changes are implemented, the grade minimum and maximum shall be adjusted and no employee shall be paid below the new grade minimum. (5/2/04)
  - A. Repealed 5/1/04.
- P-3-4. If pay grade changes are downward, employees' base pay shall remain unchanged, subject to the statutory three-year limitation on saved pay. (5/2/04)

### **Compensation Rates**

- P-3-5. The Department of Personnel shall publish the annual compensation plan. Departments shall use an hourly rate based on an annual salary to compensate employees who do not work a predetermined or full schedule. (5/2/04)
- P-3-6. Saved pay applies to downward movements due to individual allocation, system maintenance studies, and the annual compensation survey to maintain an employee's current base when it falls above the new grade maximum. Base pay shall be moved to the maximum at the first available opportunity that does not cause a loss in the employee's pay. However, in no case will the employee's base pay remain above the grade maximum after three years from the action, even if it results in a loss in pay. (5/2/04)
- P-3-7. Unless authorized by the director, the rate resulting from multiple actions effective on the same date shall be computed in the following order except that the director may withhold salary adjustments for any employee with a final overall rating of needs improvement except as provided in P-3-3: (5/2/04)
  - 1. System maintenance studies;
  - 2. Upward, downward, or lateral movements;
  - 3. Base pay changes for the Teacher I class;
  - 4. Changes in pay grade minimums and maximums to implement approved annual compensation changes;
  - 5. Salary adjustments to the base pay of employees from the approved annual compensation changes, subject to the new grade maximum;
  - 6. Bring salaries to the new grade minimum as a result of compensation survey pay grade changes;
  - 7. Annual performance salary adjustments.
- P-3-8. No employee shall be paid below the minimum of the pay grade. A new employee, including one returning after resignation, is typically hired at the grade minimum unless recruitment difficulty or

other unusual conditions exist. In those instances, the hiring salary may be a rate that does not exceed grade maximum. (5/2/04)

- A. Reemployed employees are compensated at the base pay rate held at the time of layoff, including a saved pay rate if it is within three years of the date the employee was placed in saved pay. This also applies to employees returning during the initial contract period for a non-classified appointment.

P-3-9. In the case of fiscal emergency or other budget reasons, an employee may agree to voluntarily reduce current base pay, which shall be approved in writing by the appointing authority and employee. If funds become available at a later date, the department may restore base pay to any rate up to, and including, the former base pay. This policy shall not be used to substitute for other provisions in this chapter. (7/1/02)

P-3-10. When a non-classified *position* is brought into the state personnel system and the non-classified person is selected to fill the position, the base pay shall be computed in accordance with the Department of Personnel's directives that shall ensure that total compensation is preserved to the greatest extent possible, except that base pay shall not exceed the grade maximum. (7/1/01)

### **Downward Adjustments**

P-3-11. In the case of system maintenance studies and individual allocations of positions, the base pay shall remain the same, including saved pay.

P-3-12. In the case of other downward movements, the base pay shall not exceed the current rate and shall not be above the maximum in the new grade. (7/1/01)

### **Upward Adjustments**

P-3-13. In the case of system maintenance studies, employees' base pay shall remain the same. If the director finds that severe and immediate recruitment and retention problems make it imperative to increase pay to maintain critical services, the director may order that base pay be increased up to the percentage increase for the new class. (1/1/00)

P-3-14. In the case of other upward movements, the employee's base pay may increase or remain the same, in which case the employee would receive the economic opportunity by moving to the new grade. In no case shall the new base rate be lower than the minimum or higher than the maximum of the new grade. (7/1/01)

- A. When conditional employees move upward, the base pay shall be computed based on the certified class.

### **Lateral Adjustments**

P-3-15. Lateral movement is a change to a different class or position with the same range maximum (e.g., transfers, individual allocations, system maintenance studies including class placement), or an in-range salary movement in the same position. Base pay shall be any rate between the employee's current rate and the grade maximum, subject to the provisions of the following in-range movements. 5/1/04)

In-Range Salary Movements. A department may use these discretionary movements to increase base salaries of permanent employees who remain in their current classes and positions when there is a critical need not addressed by any other pay mechanism. The use of in-range salary movements is not guaranteed and shall be funded within existing budgets. These movements shall not be retroactive and frequency is limited to one in-range salary movement in a 12-month period. No aspect of granting these movements is subject to grievance or appeal, except for alleged



discrimination; however, an alleged violation of the department's plan can be disputed. A department's decision in the dispute is final and no further recourse is available. Once granted, a reduction in base salary is subject to appeal. Departments must develop a written plan addressing appropriate criteria for the use of any movement based on sound business practice and needs, e.g., eligibility, funding sources, approval requirements, measures to ensure consistent use. The plan must be communicated within the department and a copy provided to the director prior to implementation. If granted, there must be an individual written agreement between the employee and the appointing authority that stipulates the terms and conditions of the movement. Records of any aspect of these movements shall be provided to the director when requested. (5/2/04)

- A. Salary Range Compression. Used as a salary leveling increase where longer-term employees are paid lower in the range than new hires over a period of time resulting in documented ongoing retention difficulties. Thus, there is a valid need to increase one or more employee's base salary in recognition of contributions equal to or greater than the newly hired employees. Justification shall be required based on facts. To be eligible, an employee must be performing satisfactorily as evidenced by the most recent final overall performance rating. The increase may be up to 10 percent or the maximum permitted by the department's policy on hiring salaries, whichever is greater, and subject to the pay grade maximum. (5/2/04)
- B. Counteroffer. Used when an employee with *critical, strategic skills* receives a higher salary offer from another department or outside employer and the appointing authority needs to increase the employee's base salary for retention purposes. To be eligible, an employee must be performing satisfactorily as evidenced by the most recent final overall performance rating. Some form of written confirmation of the other entity's salary offer is required. The increase may be up to 10 percent or the maximum permitted by the department's policy on promotional pay, whichever is greater, and subject to the pay grade maximum. (5/2/04)
- C. Delayed Promotional Increase. Used when a promotion is made with no salary increase or partial salary increase because production expectations are unproven and/or funds may be unavailable at the time of promotion. This is a one-time base salary increase within 12 months of the date of promotion when funds become available and the employee's contributions are fulfilled. The intent to provide a later salary increase must be documented at the time of the promotion. To be eligible, an employee must be performing satisfactorily as evidenced by the most recent final overall performance rating. The increase may be up to 10 percent or the maximum amount permitted in the department's policy on promotional pay increases, whichever is greater, and subject to the pay grade maximum. Transfer, promotion, demotion, or separation of the employee will negate the delayed increase. (5/2/04)
- D. New Hires. Used at the time an employee is hired when production expectations for critical skills are unproven and/or funds may be unavailable. This is a one-time base salary increase within 12 months of hire. The intent to provide a later salary increase must be documented at the time of hire. To be eligible, early satisfactory completion of specified training objectives must be documented. This is limited to a one-time increase up to 10 percent or the maximum permitted by the department's policy on promotional pay increases, whichever is greater, and subject to the pay grade maximum. Transfer, promotion, demotion, or separation of the employee will negate the delayed increase. (5/2/04)

### **Service Dates**

P-3-16. A service date is the date of hire. Normally service dates do not change, including for military leave and military training leave. Exceptions are as follows. (7/1/02)

- A. A break in service of more than 90 days for certified employees requires new service date based on the date of rehire. Probationary employees who have any break in service receive new service dates based on the date of rehire.
- B. For certified employees with a break in service of 90 days or less, leave without pay, or reemployment, the date is adjusted one month forward for every 173 working hours not actually worked. (5/30/03).
- C. Repealed 7/1/02.
  - 1. Repealed 7/1/02.
- D. Repealed 7/1/02.

### **Annual Performance Salary Adjustments**

P-3-17. Repealed 7/1/02.

P-3-18. Beginning July 1, 2004, and subject to the provisions of P-3-19, prior to the payment of annual performance salary adjustments, the director shall specify and publish the percentage ranges for performance levels based on the available statewide performance pay funding. (5/2/04)

P-3-19. Beginning July 1, 2004, any permanent employee is eligible for an annual performance salary adjustment, except as provided below. All performance salary adjustments are effective on July 1. The adjustment is based on the final overall rating. The employee must be employed on July 1 to receive payment of an adjustment. The employee's current department as of July 1 is responsible for payment of the adjustment. (5/2/04)

- A. Repealed 5/1/04.
- B. If the final overall rating is excellent, the adjustment to base pay shall not exceed the grade maximum. Any portion of the adjustment amount that exceeds grade maximum shall be paid as a one-time lump sum in the July payroll. The statutory salary lid does not apply to any non-base building portion of the adjustment. (5/2/04)
- C. If the final overall rating is not excellent, the adjustment cannot exceed the grade maximum. If base pay is at grade maximum or in saved pay above the maximum, the employee is ineligible for a performance salary adjustment. (5/2/04)
- D. If the final overall rating is needs improvement, the employee is ineligible for an annual performance salary adjustment. (5/2/04)
- E. An employee granted an annual performance salary adjustment shall not be denied the adjustment because of a corrective or disciplinary action issued for an incident after the close of the previous performance cycle. (5/2/04)
- F. Base building adjustments are permanent and paid as regular salary. (5/2/04)

P-3-20. Departments are strongly encouraged to use incentive rewards. (7/1/01)

### **Incentive Awards**

P-3-21. An appointing authority may grant an immediate cash or non-cash incentive award in recognition of special accomplishments or contributions throughout the year or to augment an annual performance salary adjustment, e.g., on-the-spot cash awards, work-life programs. The statutory salary lid does not apply to these incentive awards. Departments must develop and communicate, prior to use and

on an ongoing basis, a plan outlining their award program. Such plans shall be developed with the input of employees and managers. Records on any aspect of this program must be provided to the director when requested. (5/2/04)

### **Teacher Plan**

P-3-22. The pay grade for Teacher I is determined by the employee's academic achievement level (not proficiency or level of responsibility) as evidenced by credentials. Base pay shall not be adjusted to a lower pay grade for deficiencies in performance or discipline, except for falsification of credentials. However, base pay may be adjusted downward within the grade for deficiencies in performance or discipline.

P-3-23. For movement to and from the Teacher Plan, use the maximum of the appropriate level in the teacher class series to compare with the maximum of the non-teacher class to determine if the action is a lateral, upward or downward movement and as the basis for computing base pay. (7/1/01)

### **Medical Plan And Senior Executive Service**

P-3-24. Employees in the medical pay plan shall be compensated based solely on performance as established in the required annual contract to be negotiated by July 1 of the contract year, or within 30 days of hire or movement within the medical pay plan for the remainder of the contract year. Employees are not eligible for any pay adjustments, such as the annual performance salary adjustment. Current performance contracts may be modified during the contract year but not compensation. Change in compensation shall only occur at the end of a contract period, unless an employee moves to another position, and may increase, decrease, or remain unchanged from the previous year. In the case of upward or downward movement in the medical pay plan, compensation must be no lower than the minimum or higher than the maximum rates of the new grade and a new contract must be negotiated for the remainder of the contract year. (8/2/04)

A. If no contract is negotiated, the existing contract continues and base pay stays the same until a new contract is negotiated. Employees in the medical pay plan may grieve the rate unless it is lower, which is then subject to appeal. If the employee moves into or out of the medical pay plan into another open-range class, the base pay shall be negotiated. (8/2/04)

P-3-25. Employees in the senior executive service shall be compensated based solely on performance as established in the annual contract, which must be negotiated by July 1 of the contract year, or within 30 days of hire or movement within the plan for the remainder of the contract year. All contracts expire on June 30 and no employee shall remain in the senior executive service without a contract. The salary shall not exceed the maximum allowed for the position in the management class by more than 25 percent. Employees are not eligible for any pay adjustments, such as the annual performance salary adjustment. Current performance contracts may be modified during the contract year but not compensation. Compensation may only be changed at the end of a contract period, and may increase, decrease, or remain unchanged from the previous year, unless the employee moves to another position. (5/2/04)

A. If the department director determines that the employee failed to perform satisfactorily under the contract, the contract expires and the employee is separated on June 30 of the contract year. The department director must give the employee written notice by May 1 before the contract expires.

B. If the department director has not provided the employee timely written notice of failure to perform satisfactorily under the contract, and no new contract is negotiated by July 1, the position is removed from the senior executive service pay plan and returned to the traditional classified pay plan. The employee's salary shall be set at either the contract salary or statutory salary lid, whichever is lower.

## **Overtime**

- P-3-26. All employees are covered by the Fair Labor Standards Act (FLSA). Under FLSA, the state is considered to be a single employer. Employees cannot waive their rights under FLSA.
- P-3-27. Overtime for non-exempt employees shall be approved in accordance with a department's procedure. A department director shall establish a policy to address unauthorized overtime work; however, prohibition of unauthorized overtime does not avoid the requirement to pay if it is actually worked. (7/1/02)
- P-3-28. Overtime is that time a non-exempt employee is directed or permitted to work in excess of the 40 hours during a standard work week (168 consecutive hours in seven consecutive days). Appointing authorities may apply different work periods for law enforcement and health care employees as permitted by federal law. Such excess hours are paid at 1½ times the employee's regular hourly base pay rate, including applicable premium pay. Monetary payment must be made by the next regularly scheduled payday following the pay period in which it was worked. (2/1/01)
- A. Compensatory (comp) time in lieu of monetary payment is allowed if there is a written agreement between the department and any employee hired after 4/15/86. Written agreements for those hired prior to 4/15/86 are unnecessary provided that the department had a regular practice in place for granting comp time. Acceptance of comp time may be a condition of employment for new employees. Comp time must be taken within four months after the end of the pay period in which overtime was worked. Any comp time in excess of 60 hours and not taken within the four-month limit must be paid at the next regular pay period. Exceptions to this policy must be approved by the Department of Personnel. Unused comp time at termination or transfer to another department must be paid at that time. (5/30/03)

## Eligibility

- P-3-29. Department directors are responsible for determining if each position is exempt or non-exempt based on the actual duties performed regardless of class. Determinations must be entered into the payroll system and a record kept on file.
- P-3-30. An exempt employee's pay is not subject to reduction except as follows. Deductions of less than one week are not allowed for discipline (unless it is a major violation of safety rules). Deductions are allowed for any amount of time if the leave of absence was not requested or was denied and accrued leave is not used; OR is covered by Family and Medical Leave Act (FMLA); OR accrued leave is exhausted; OR for voluntary furlough. In the case of mandatory furloughs for budgetary reasons, exempt status is not changed, except for the workweek in which the furlough occurs and pay is reduced. Improper reductions make the employee non-exempt. (5/30/03)
- P-3-31. No extra pay shall be granted to exempt employees for hours in excess of 40 hours in a work week. Time off shall not be granted except that an appointing authority may grant discretionary administrative leave in unusual situations in amounts less than the extra hours worked.
- P-3-32. The employee may request a review of a decision regarding eligibility, calculation of overtime hours, and payment to the director in accordance with the "Dispute Resolution" chapter.

## Employment With More Than One Department

- P-3-33. An employee may be employed by and receive compensation from more than one department with advance written approval of the primary appointing authority. If the employee is eligible for overtime, there must be a written agreement between the appointing authorities that specifies the terms and conditions, including overtime determination, the department responsible for paying any overtime, recordkeeping, and the overtime hourly rate. The overtime rate is either the regular rate from one of

the jobs or a weighted hourly rate from both jobs. Work time from both jobs is combined to calculate overtime. (9/1/04)

#### Work Hours

- P-3-34. Leave may be denied, delayed, or canceled in order to minimize overtime liability. Appointing authorities may require the use of accrued comp time. Comp time is not leave. (7/1/02)
- P-3-35. Overtime does not accrue until a non-exempt employee works more than the maximum hours allowed in the work week or designated work period. Time worked must be recorded in 15-minute units (rounded to the nearest quarter hour). An employee shall not be required to start early or leave late by less than seven and one half minutes in order to avoid paying for the 15-minute increment.
- P-3-36. Essential, non-exempt positions, as designated by a department director, shall have paid leave counted as work time.
- P-3-37. Meal periods, if taken, of at least 30 minutes are not work time. However, if the employee is materially interrupted or not completely free from duties, the meal period is counted as work time. (1/1/04)
- P-3-38. Breaks during work are not mandatory. If granted, breaks of up to 20 minutes are work time. Breaks shall not offset other work time or substitute for paid leave; be taken at the beginning or end of the workday; nor, be used to extend meal periods.
- P-3-39. Ordinary travel to and from work is not work time. Travel from work site to work site is work time. When an employee is required to travel a substantial distance to perform a job away from the regular work site, the travel is work time.
- P-3-40. Training and meeting activities are not counted as work time as long as attendance is outside regular work hours, voluntary, not directly related to the job, **AND** work is not performed during such attendance. Even if the training is directly related to the job, voluntary attendance would not be counted if it is outside work hours.

#### Record keeping

- P-3-41. FLSA requires that certain basic records be maintained for both exempt and non-exempt employees. Each department is accountable for maintaining those records that are not kept on a centralized basis. (7/1/02)
- P-3-42. Time records must be certified by both the employee and the supervisor and are the basis for overtime calculation and compensation.

#### **Other Premium Pay**

- P-3-43. Shift differential is additional pay beyond base pay for working shifts in eligible classes as published in the annual compensation plan. Shift differential does not apply to any periods of paid leave. Second shift rate applies when half or more of the scheduled work hours fall between 4:00 p.m. and 11:00 p.m. Third shift rate applies when half or more of the scheduled work hours fall between 11:00 p.m. and 6:00 a.m. If hours are evenly split between shifts, the higher shift differential rate applies to all hours worked during the shift. Department directors may approve shift differentials for individual positions in classes not published as eligible and shall maintain records for such special cases. (7/1/02)
- P-3-44. Call back is the base pay rate for no less than two hours when an eligible employee is required to report to work before or after a scheduled shift (not a continuation of the shift). Eligible employees are those who are eligible for overtime, and the call back time is counted as work time. Employees

exempt from overtime are also eligible when approved by department directors for such special cases. (7/1/02)

P-3-45. On call is a premium pay for eligible employees specifically assigned, in advance, to such status. Freedom of movement is significantly restricted; however, the employee is still free to use this personal time effectively. Eligible employees work in classes designated by the director who will consider prevailing labor market practice for the job. Department directors may approve on-call pay for individual positions in classes not designated as eligible and shall maintain records on such special cases. Only time while actually on call shall be paid at the special rate. In call-back situations, employees eligible for both on-call and call-back pay shall receive call-back pay only. The rate is published in the annual compensation plan. (7/1/02)

P-3-46. Second domicile is a premium up to 10% of base pay paid to employees who are required to maintain a second domicile for more than 10 consecutive calendar days while working out-of-state on official state business. The department director must authorize such payments.

P-3-47. Commission award is non-base building pay in addition to base pay or other non-base building awards for employees in eligible classes and positions as approved by the director, i.e., retail sales and collections. The amount of commission is paid according to a plan established by a department director and approved by the director for individual or team performance.

P-3-48. Housing premium is a stipend granted by a department director to designated employees living and working in high housing cost areas with demonstrated recruitment and retention problems. It is not part of the base rate and may begin or end at any time. Records on any aspect of this premium must be provided to the director when requested.

P-3-49. Discretionary pay differentials. A department may use non-base building discretionary pay differentials on a temporary basis, which shall be funded within existing budgets. No differential is guaranteed and, if granted, may be discontinued at any time. No aspect of any discretionary pay differential is subject to grievance or appeal, except for discrimination; however, an alleged violation of the department's plan can be disputed. A department's decision in the dispute is final and no further recourse is available. Departments must develop and communicate a written plan addressing appropriate criteria for the use of any differential based on sound business practice and needs. If granted, there must be an individual written agreement between the employee and appointing authority that stipulates the terms and conditions of the differential. Records of any aspect of these differentials must be provided to the director when requested. (5/2/04)

A. Counteroffer to a verifiable job offer may be used when an employee with *critical strategic* skills receives a higher salary offer from another department or outside employer and the appointing authority needs to retain the employee. The sum of a non-base building differential and current base pay cannot exceed a statutory lid in any given month and may be paid in one or more payments. (5/2/04)

1. Repealed 5/1/04.
2. Repealed 5/1/04.

B. Signing bonus is a non-base building lump sum that may be used to attract new permanent employees into the state personnel system. It may be paid in one or several payments; however, the sum of the bonus and current base pay cannot exceed a statutory lid in any given month. Signing bonuses may be used for the following reasons: (7/1/01)

1. to fill positions in critical occupations where there is a documented shortage in the labor market and recruitment or retention difficulty in the department that jeopardizes its mission; or, (7/1/02)
2. the applicant possesses a unique, critical skill in relation to the job market.

- C. Referral award is a non-base building lump sum that may be granted to a current employee for the referral and subsequent hire of a new employee into the state personnel system where the position requires a unique, specialized skill and there is a documented shortage in the labor market and recruitment or retention difficulty in the department. This award is to be used for permanent employees unless the director grants an exception. Employees who influence or are responsible for hiring and those performing recruitment as part of their regular assignments are ineligible. The sum of the award and current base pay cannot exceed a statutory lid in any given month. (7/1/02)
- D. Temporary pay differential is a non-base building award that may be granted to a current permanent employee in the same position. The sum of the temporary award and current base pay shall not exceed a statutory lid in any given month and is paid through regular payroll. This differential shall not be used as a substitute for the promotional or allocation process. Temporary pay differentials may be used for the following reasons: (7/1/01)
1. acting assignment where the employee assumes the full set of duties (not "in absence of") of a higher-level position that is vacant or the incumbent is on extended leave for a period longer than 30 days but less than six months. The differential shall not exceed six months for any given acting assignment;
  2. long-term project assignment that is not an expected or customary part of the regular assignment and is critical to the mission and operations of the department as defined by the purpose of the project, its time frame, and the critical nature and expected results; or, (7/1/02)
  3. retain a unique, specialized set of skills or knowledge that is critical to the mission and productivity of the department. The loss would result in documented severe adverse effect on the department's mission and productivity. (7/1/02)

P-3-50. Hazardous Duty is a non-base building premium that may be granted to positions working in occupations where exposure to physical hazards is not a customary part or expectation of the occupation and its preparation for entry. Such positions work for a majority of their time in settings that involve clear, direct, and unavoidable exposure to risk of major injury or loss of life even after making allowances for safety. This premium is not guaranteed and, if granted, may be discontinued at any time. No aspect of this premium pay is grievable or appealable, except for discrimination. Departments must develop appropriate criteria for the use of hazard pay based on sound business practice and need, and communicate these criteria prior to use of this premium. The premium rate will be published in the annual compensation plan and, in combination with current base pay and other premium pay, cannot exceed a statutory lid in any given month. (7/1/02)

### **Voluntary Separation Incentive Program (VSIP)**

P-3-51. Voluntary separation incentives are discretionary financial incentives that may be offered to permanent employees as an alternative to a layoff in progress or anticipated based upon documented shortage of funds, shortage of work, or reorganization. Separation incentives are contingent upon an employee's waiver of retention and reemployment rights, but waiving those rights does not affect the employee's eligibility for reinstatement. A department director must establish a separation incentive plan before a department makes any separation incentive offers. (1/1/04)

P-3-52. The director shall establish and publish, at least annually, the amount and limitations of separation incentives taking into consideration prevailing market practice. (1/1/04)

P-3-53. The employee and department must execute a written contract before payment of any separation incentive. The contract must include the following provisions: (1/1/04)

1. A statement that the employee is required to pay all applicable taxes on the payment;
2. The employee's acknowledgement that the state will withhold taxes according to law

- before payment;
3. The employee's agreement to waive retention and reemployment rights, if applicable, along with a statement that the separation is voluntary and not coerced or obtained through means other than the terms of the contract;
  4. The date of the employee's last day of work;
  5. An acknowledgement that no payment will be made until after the last day of work and compliance with other provisions of the contract; and,
  6. The total amount of the separation incentive and a statement that the amount is within the director's parameters.



## **Chapter 4    Employment And Status**

### **General Principles**

- R-4-1. Members of the state's population shall have an equal opportunity for entry into the state personnel system after fair and open competition.
- R-4-2. Selection is based on quality of performance and job-related ability as measured by examinations of competency. All applicants must meet minimum requirements for the vacancy in order to be referred or appointed.

### **Recruitment**

- R-4-3. Each agency shall develop a comprehensive recruitment program designed to meet current and projected staffing needs. Such plans should consider geographic area, labor market, number of anticipated vacancies, diversity, and other relevant factors.
- R-4-4. An agency may request that the Board grant a residency waiver when the agency can show: (2/1/01)
  - A. the position(s) involved require special education or training; or
  - B. the position(s) involved requires special professional or technical qualifications; and
  - C. there is an insufficient instate applicant pool; and
  - D. it is not feasible to train and hire from within.

If the Colorado Unemployment Index, or its equivalent, reflects an unemployment rate of less than 3%, and an agency's turnover rate for employees within the class series subject to the waiver request is greater than 10%, a presumption in favor of a residency waiver for the position(s) shall exist.

The Board may require that an agency provide written reports to the Board regarding the status of recruitment while subject to a residency waiver.

- P-4-1. Job vacancies shall be announced in locations where potential applicants might reasonably expect to find them. Statewide promotional and open competitive positions must be listed on the Internet.
- P-4-2. Applications must be submitted in the prescribed format as specified in the announcement. The director will maintain a procedure for voluntary, confidential self-identification to comply with state and federal requirements.

### **Methods**

- R-4-5. Appointing authorities may fill vacancies by transfer, demotion, reappointment, reinstatement, temporary appointment, or appointment from an employment list.
- P-4-3. At the discretion of the appointing authority, transfers and non-disciplinary demotions may be considered before or along with employment lists. Employment lists are used in the priority order established by law and discussed below.
- P-4-4. Employees appointed from a departmental reemployment list for a class must be qualified for the position. If a departmental reemployment list does not exist, the appointing authority has the discretion to consider reappointments, reinstatements, and other agencies' reemployment lists before or along with promotional or open-competitive lists.

- P-4-5. Transfer is an appointment of a qualified employee to a different position in the same class or with the same grade maximum. An employee or an appointing authority may initiate a transfer. When the appointing authority(s) initiates the transfer within the same department and the employee refuses it, the employee is deemed to have resigned. If the transfer is outside 25 miles, is longer than six months, and was not a condition of employment, the employee's name is placed on the reemployment list. (1/1/02)
- P-4-6. Non-disciplinary demotion is a voluntary change to a class with a lower grade maximum. (7/1/01)
- P-4-7. Reappointment is a discretionary appointment of a certified current employee back into a class from which the employee was voluntarily demoted or to which the employee is eligible for reinstatement. The employee may be reappointed to a related class with the same or lower grade maximum than the previously certified class. (5/30/03)
- P-4-8. Reinstatement is a discretionary appointment to the same or equivalent class from which a former certified employee resigned in good standing. The former employee may be reinstated to a related class with the same or lower grade maximum than the previous class. Effective August 2, 2004, the date the employee resigned shall not be a factor in determining eligibility for reinstatement. (8/2/04)
- P-4-9. Conditional or Provisional is a temporary appointment to a permanent position approved by the director. Provisional appointments are made only if the position cannot be filled conditionally.

### **Examinations**

- P-4-10. Except where required by law, experience will substitute for required education. Applicants for specifically announced positions must be notified whether they qualify. Reasonable notice of pertinent information must be provided to qualified applicants. Persons with disabilities may request reasonable accommodation at least three working days prior to the administration of any examination.
- P-4-11. The selection process is considered to be competitive if a reasonable opportunity was provided to potentially qualified persons to apply and compete against the same standards. Examinations shall be developed, administered, and scored in accordance with written directives. Examinations may include, but are not limited to, one or more of the following: written, performance, oral, physical, training evaluations, experience evaluations, or performance evaluation ratings. If multiple components are used in an examination, the applicant may be required to pass one step before proceeding to the next. All examination materials and scores are confidential except as provided by the Colorado public records act. (1/1/02)
- P-4-12. Applicants may appeal the content or conduct of an examination to the director in accordance with the "Dispute Resolution" chapter.

### **Employment Lists**

- R-4-6. If filling a vacancy from an employment list, lists must be used in the following order: departmental reemployment, promotional, then open-competitive.
- R-4-7. Departmental Reemployment lists are established on a departmental basis as listed in the "Separation" chapter and contain the names of certified employees who are laid off, voluntarily demoted in lieu of layoff or as a result of a position's allocation, or return (during the initial appointment period) from a position outside the state personnel system. Employees may limit their availability to specific locations and work schedules. Departmental reemployment lists last for one year. All those qualified are referred. (1/1/00)
- R-4-8. Promotional lists contain the names of current employees and persons on reemployment lists who have successfully completed the examination process, which may include objective measures of

competency. Open-competitive lists contain the names of any persons who have successfully completed the examination process, which may include objective measures of competency. Placement on these lists is determined by the final converted passing score plus any applicable veteran's preference points when the list is open competitive. (1/1/00)

P-4-13. Cancellation or expiration of a list does not affect the statutory rights of employees on military leave.

P-4-14. Addition of names and adjustment of rankings or scores do not affect prior appointments or referrals. (1/1/00)

P-4-15. Any person shall be removed from employment lists or consideration for a vacancy for reasons determined by the director, which include, but are not limited to, the following. (1/1/02)

A. Reasons for removal from all employment lists:

1. attempts to use political pressure or bribery;
2. unauthorized access to examination information;
3. false statements or attempts to practice fraud and deception during the application process;
4. violation of state statutes or regulations that may affect the ability to perform the job; or,
5. no longer interested or available for employment, or appointment to a permanent position (limited to the same or higher class for a departmental reemployment list).

B. Reasons for removal from one employment list:

1. a record of unsatisfactory performance;
2. failure to meet the minimum qualifications;
3. failure to report for an interview or component of an examination;
4. failure to respond to a referral within the time allowed;
5. refusal of an appointment or conditions previously indicated as acceptable;
6. failure to be appointed after referral and interview for three or more vacancies with the same appointing authority; (12/1/04)
7. evidence of current excessive use of substances that may affect job performance; or,
8. failure to meet the physical requirements or background check as listed in an announcement.

P-4-16. Written notice shall be provided to persons removed from employment lists for reasons specified in P-4-15 (A)(1) through (4) and (B)(1) and (2). Except for removal from a departmental reemployment list, the affected person may request, in writing, a review of the action in accordance with the "Dispute Resolution" chapter. Removal from a departmental reemployment list or denial of reemployment rights is appealable to the Board in accordance with the "Dispute Resolution" chapter. (1/1/02)

## **Referrals**

P-4-17. Upon receipt of a request to fill a vacancy, referrals of the three highest ranking candidates will be made from the appropriate employment lists. For requests to fill multiple vacancies by the same appointing authority, a list of candidates containing no fewer than the number of vacancies plus two up to no more than three names for each vacancy to be filled will be referred to the appointing authority. The appointing authority shall determine the number of candidates to be referred at the time the vacancies are announced. If the total number of candidates is less than the minimum or less than the number requested by the appointing authority, the total number of candidates shall be referred. All those referred must be notified of their referral, and may be considered for appointment. Such consideration may include record review, interview, additional screening to determine final

interviews, or other merit-based criteria. The person(s) appointed shall be any of the persons referred regardless of rank on the appropriate eligible list. (12/1/04)

## **Selection**

P-4-18. All those who respond to a referral should be interviewed in compliance with state and federal law. No additional examination that is not related to the job can be administered. Background investigations and physical or psychological examinations are allowed when appropriate as determined by the job analysis and state or federal guidelines. Those who are not selected should be notified by the appointing authority.

## **Employee Status**

R-4-9. Probation applies to permanent appointments or, at the discretion of the appointing authority, reinstatements. The probationary period must not exceed 12 working months except as provided in the "Time Off" chapter. (1/1/00)

R-4-10. Probationary employees do not have a right to a pre-disciplinary meeting, to a mandatory hearing to review discipline for unsatisfactory performance, to be granted a period of time to improve performance, to be placed on a reemployment list, or to the privilege of reinstatement. However, probationary employees may petition the Board for a discretionary hearing on non-disciplinary matters. (5/1/02)

R-4-11. Trial Service applies when a certified employee promotes or reappoints. The trial service period must not exceed six working months, except as provided in the "Time Off" chapter or when there is a selection appeal pending. (5/1/02)

A. An employee who fails to perform satisfactorily during trial service shall revert to an existing vacancy in the previously certified class in the current department with no right to a hearing or, if there is no existing vacancy in the previously certified class, may be administratively separated. The appointing authority has discretion to administer corrective or disciplinary action instead of reversion or administrative separation. (5/1/03)

R-4-12. Certified applies to employees who successfully complete a probationary or trial service period. A certified employee who transfers or demotes remains certified. Early certification is not allowed if a selection appeal is pending. (5/1/02)

A. When accepting a state position outside the state personnel system at the request of an elected or appointed state official, a certified employee is subject to the provisions of C.R.S. 24-50-137.

R-4-13. Filling Vacancies with State Employees Outside the State Personnel System. Any state employee who is not in the state personnel system must successfully complete the examination process before being placed in a position in the state personnel system. Treatment of the employee is subject to the provisions of C.R.S. 24-50-136. This includes political subdivisions of the state with similar merit systems who have a formal arrangement with the Board.

## **Temporary Status**

P-4-19. No person shall work as a temporary employee longer than six months in a 12-month period.

P-4-20. Temporary applies to a qualified person who is appointed to a non-permanent position. Temporary employees are employed at will and do not have the rights and benefits provided to permanent employees, except those mandated by law and pay grade minimum. Effective December 31, 1998, no credit is provided for a temporary position when an employee accepts a permanent position in the same class without a break in service. (5/2/04)

P-4-21. Conditional applies to a qualified certified employee who temporarily promotes into a permanent vacancy for which no eligible list exists. Time spent in conditional status does not constitute a break in service. If the employee is subsequently appointed to the position from a list, the trial service period begins on the date of the conditional appointment. If not subsequently appointed to the position, the employee reverts to an existing vacancy in the certified class in the current department. If no vacancy exists, layoff provisions apply.

P-4-22. Provisional applies to a qualified person outside of the state personnel system who is temporarily appointed to a permanent vacancy for which no eligible list exists. If the person is subsequently appointed to the position from a list, the probationary period begins on the date of the permanent appointment. Provisional employees do not have the rights and benefits provided to permanent employees, except those mandated by law and pay grade minimum. (5/2/04)

### **Substitute Appointment**

P-4-23. A substitute appointment may be made to perform the duties of a filled position during a leave of absence or for training purposes. This appointment shall not exceed six months unless it is filled by transfer, demotion, or examination. Layoff provisions do not apply and a certified employee is returned to a position in the former class.

## Chapter 5 Time Off

### General Principles

- P-5-1. Regular attendance and punctuality are an important part of each state job so employees must use leave responsibly. They are responsible for requesting leave on the *State of Colorado Leave Request and Authorization* form (or equivalent form) as much in advance as possible, providing the general reason for the leave and sufficient information. The leave form shall balance the employee's privacy rights and the employer's need to know in order to make the Family/Medical Leave designation. Appointing authorities are responsible for approval of all types of leave, subject to these provisions. They are expected to use good business judgment and leave management practices to balance the needs of employees with the state's, to prevent abuse, and to comply with all legal requirements. Unauthorized use of any leave may result in the denial of paid leave and/or corrective or disciplinary action. (1/1/00)
- P-5-2. Generally, paid leave is to be exhausted before an employee is placed on unpaid leave.
- P-5-3. Agencies must report, in a timely manner, the use of any type of leave when requested by the director for use in the accurate tracking, reporting, and costing of information used to make policy decisions. Such reporting includes providing current leave sharing materials.

### Personal Leave

- P-5-4. Annual leave is provided for an employee's personal needs. Use is subject to the approval of the appointing authority who may establish periods when annual leave will not be allowed, or must be taken, based on business necessity. These periods cannot create a situation where the employee does not have a reasonable opportunity to use leave which will be subject to forfeiture.
- P-5-5. Sick leave is provided in the event time off is needed for health reasons. This includes diagnostic and preventative examinations, treatment, and recovery. Accrued sick leave may also be used for the health needs of the employee's child who is under the age of 18 or an adult child incapable of self care, parent, spouse, legal dependent, **OR** a person in the household for whom the employee is the primary care giver. The appointing authority may require documentation of the familial relationship. Note that this definition of family is different from family/medical and funeral leave. (1/1/00)
- P-5-6. A **State of Colorado Medical Certificate** form (or equivalent) completed by a health care provider must be provided within 15 calendar days, absent extenuating circumstances, for any absence of more than three consecutive, full working days in accordance with statute. Certification may also be required for absences of fewer days at the discretion of the appointing authority to determine if family/medical leave applies or when a pattern of absences indicates possible abuse. Additional medical certificates may be required every 30 days or the time period established in the original certificate, whichever is longer, unless circumstances change or new information is received. Failure to provide the certificate will result in denial of leave and possible corrective/disciplinary action.
- P-5-7. If the condition is covered by FML and does not involve workers' compensation or a reasonable accommodation under the Americans with Disability Act, there shall be no contact with the employee's health care provider. If the department employs a health care provider and the employee has given written permission, that health care provider may contact the employee's health care provider to clarify content or verify authenticity. (7/1/02)
- P-5-8. The appointing authority has the right to request a second opinion on the **original** certificate. The department must pay the expenses for the second opinion and chooses a health care provider who is not employed by, or on contract with, the state. An appointing authority may require a third opinion which is final and binding, if the original and second opinions conflict. Again, the department must pay the expenses but the health care provider is mutually agreed upon. (7/1/02)

- P-5-9. If an absence is more than 30 days for the employee's own condition, a fitness-to-return certification is required for that condition. The certification may be required for absences of 30 or fewer days when it is a business necessity given the nature of the condition in relation to the assignment. It cannot be required for those taking intermittent family/medical leave. The employee is allowed at least 15 calendar days from the date of the request to provide the required certificate. Failure to provide a fitness-to-return certification as instructed could result in delay of return, a requirement for a new medical certification, or administrative discharge as defined in P-5-10.
- P-5-10. If an employee has exhausted all sick leave and is unable to return to work, accrued annual leave will be used. If annual leave is exhausted, leave-without-pay may be granted or the employee may be administratively separated by written notice after pre-separation communication. The notice must inform the employee of appeal rights and the need to contact PERA on eligibility for retirement. No employee may be administratively separated if FML or short-term disability leave (includes the 30-day waiting period) apply or if the employee is a qualified individual with a disability who can reasonably be accommodated without undue hardship. When an employee has been separated under this procedure and subsequently recovers, a certified employee has reinstatement privileges.  
(1/1/04)

Personal Leave Earning, Accrual, Payout, And Restoration								
Annual Leave					Sick Leave			
Yrs. of Service*	Hrs./Mon.	Max. Accrual**	Restoration	Payout	Hrs./Mon.	Max. Accrual*	Restoration	Payout
1st through 5th	8	192 hrs.	Earning and accrual rates restored when eligible for reinstatement or reemployment.	Upon termination or death, unused leave paid out up to the maximum accrual rate.	6.66	Hired 7/1/88 or later, 360 hrs. Hired before 7/1/88, individual amount equal to 6/30/88 amount + 360 hrs.	Previously accrued sick leave is restored when eligible for re-instatement or reemployment.	Upon death or if eligible to retire upon termination, 1/4 of unused leave paid out to the maximum accrual rate. (7/1/02)
6th through 10th	10	240 hrs.						
11th through 15th	12	288 hrs.						
16th and above	14	336 hrs.						
* Computed from 1st calendar day of the month following hire unless employee began work on the 1st working day (then that month).					* Over-accrued sick leave up to 80 hrs. is converted to annual leave each 7/1 on a 5:1 ratio (5 hrs of sick converts to 1 hr. annual leave).			
** Over-accrued amounts are forfeited each 7/1.								
<b>General Provisions:</b>								
Employees must be at work or on paid leave to earn monthly leave. Leave is not available for use until the beginning of the next month after it was earned but terminating employees shall be compensated for such leave if they work or are on paid leave through the date of termination. Movement to the next higher leave-earning rate is adjusted one month forward for each 173.33 working hours leave without pay in a 12-month period. (2/1/01)								
An employee on paid leave for an entire month earns leave based on the regular monthly schedule but it is not credited until the end of the month after return to continuous, regular employment.								
Part-time employees who work regular, non-fluctuating schedules earn leave on a pro-rated basis based on the percentage of the regular appointment, rounded to the nearest 1/100 of an hour. Leave for part-time employees who work irregular, fluctuating schedules and full-time employees who work or are on paid leave less than a full month is calculated by subtracting the hours of leave without pay from 173.33 and dividing this figure by 173.33. The percentage is then multiplied by the employee's leave earning rate to derive the leave earned. Overtime hours are not included in leave calculations. The annualized hourly rate is used to pay unused leave to eligible employees. (5/1/01)								
Borrowing against any leave that may be earned in the future or "buying back" leave already used is not allowed.								
Forfeiture of leave as a disciplinary action or a condition of promotion, demotion, or transfer is not allowed.								
Use of annual leave cannot be required for an employee being laid off.								
Worker's Compensation: When an employee is receiving worker's compensation payments, accrued sick and annual leave are used in an amount that is closest to the difference between the temporary compensation payment and the employee's gross base pay, excluding any pay differentials.								
For purposes of restoration, current employees whose records establish they would have been eligible to reinstate except for the 5-year or 1-year limitations, shall have their leave earning and maximum accrual rates restored. However, leave balances shall not be adjusted nor shall previously accrued sick leave hours be restored. (8/2/04)								



## **Leave Sharing Program**

P-5-12. This program allows the transfer of annual leave between permanent state employees under certain circumstances subject to the discretionary approval of a department director (both directors if between agencies). The authority to approve leave sharing shall not be delegated below the department director without advance written approval of the director.

P-5-13. To be eligible to apply, the employee must have at least one year of state service. All personal accrued leave must be exhausted and the employee must not be receiving short-term disability, long-term disability or worker's compensation benefits. The employee, or an immediate family member as defined under sick leave, must be experiencing a catastrophic illness or injury that poses a direct threat to life, e.g., cancer, serious accident, major heart attack, etc. Leave sharing is not an entitlement even if the individual case is qualified. Donated leave is not part of the annual leave pay out upon termination or death. (1/1/00)

## **Holiday Leave**

P-5-14. Permanent employees are granted up to eight hours (rounded to the nearest 1/100 of a hour and prorated for part-time employees pursuant to P-5-11) to observe each legal holiday designated by law, the Governor, or the President provided they work or are on paid leave the scheduled workday either before or after the holiday. If a holiday falls on a day a part-time employee is not scheduled to work, the employee is granted the prorated hours of holiday leave at a time determined by an appointing authority. Appointing authorities may designate alternative holiday schedules for the fiscal year. Failure to be at work or on paid leave either the scheduled workday before or after an alternate holiday results in forfeiture of one day of holiday pay. When a holiday is observed on their first or last regularly scheduled workday of the month, new employees, terminating employees, and employees going on or returning from leave without pay shall be granted holiday leave, provided they work or are on paid leave all other scheduled workdays of the month. (8/2/04)

A. Department directors have the discretion to grant employee requests to observe César Chávez day, March 31, in lieu of another holiday in the same fiscal year. When granting the request, the department must be open and at least minimally operational for both days and the employee must have work to perform. (1/1/02)

P-5-15. Each department shall establish equitable and consistent policy to ensure that all permanent employees are awarded their full complement of holidays. (1/1/02)

## **Other Employer-Provided Leaves**

P-5-16. The types of leave in this section do not accrue, carry over, or pay out.

P-5-17. Funeral leave provides up to 40 hours of paid leave to permanent employees for the death of a family member or other person. Funeral leave cannot be used for settling an estate. The decision to grant and the amount of leave is based on the relationship to the deceased and the distance and mode of transportation.

P-5-18. Military training leave provides up to 15 workdays in a calendar year of paid leave to employees who are members of the National Guard or military reserves. It is granted to attend the annual encampment or equivalent training. The employee must present proper military orders. This leave is not a break in service and military pay is not turned over to agencies.

P-5-19. Military leave provides unpaid leave to permanent employees who are called to active service, including training or declared emergencies. Unused military training leave is used before being placed on unpaid leave. The employee may request the use of annual leave before being placed on unpaid leave.

- A. In the case of a state emergency, the employee must return upon release from active duty. In the case of federal service, the employee must apply to return within 90 days of release. The employee is entitled to the same position or a position in the same class within the same agency. This leave is not a break in service.

P-5-20. Jury leave provides paid leave to permanent employees for jury duty. Temporary employees are granted up to three days of jury leave. Jury pay is not turned over to the department. (7/1/02)

P-5-21. Administrative leave provides for the appointing authority to grant paid time to employees for reasons determined to be for the good of the state, including periods of investigation into an employee's conduct, incentive awards, coursework at a higher education institution directly related to the work, to participate in tests and interviews for state positions, to participate in school or community volunteer activities, and participation in official activities by elected officers of employee organizations. An appointing authority may grant administrative leave up to five days for local or 15 days per fiscal year for national emergencies to employees who are certified disaster service volunteers of the American Red Cross. Administrative leave is not intended to be a substitute for such things as corrective or disciplinary action or other benefits and leave. In determining whether administrative leave is for the good of the state, an appointing authority considers prudent use of taxpayer and personnel service dollars and the business needs of the department. (5/1/01)

- A. Any administrative leave granted to an employee that exceeds 20 consecutive working days must be reported to the department director and the director.

P-5-22. Administrative leave must be granted for the following. (1/1/00)

- A. Repealed 1/1/00.
- B. Participation in hearings or settlement conferences at the direction of the Board or director and to testify in court or official government hearings on state-related matters when required by an appointing authority or subpoena.
- C. Two hours to participate in general elections if the employee does not have three hours of unscheduled work time during the hours the polls are open.
- D. Up to two days per fiscal year for organ, tissue, or bone donation for transplants.
- E. Repealed 1/1/00.
- F. Repealed 1/1/00.

P-5-23. Leave without pay may be approved by the appointing authority unless otherwise prohibited. The appointing authority may also place an employee on leave without pay for unauthorized absences and may consider corrective and/or disciplinary action. Those on unpaid leave receive no service credit and the service date is adjusted one month forward for every 173 hours accumulated in a 12-month period, except those on military leave, voluntary furlough, or while waiting for retention rights. Probationary and trial service periods are extended by the number of days on unpaid leave and may be extended for periods of paid leave. (1/1/00)

- A. Short-term disability (STD) leave is a type of unpaid leave of up to six months while either state or PERA STD benefit payments are being made. To be eligible for this leave, employees must have one year of service and an application for the STD benefit must be submitted within 30 days of the beginning of the absence or at least 30 days prior to the exhaustion of all accrued sick leave. The employee must also notify the department at the same time that a benefit application is submitted. (7/1/02)

- B. Voluntary furlough is a type of unpaid absence granted for up to 72 workdays per fiscal year when a department director declares a budget deficit in personal services. The employee may request such absence to avoid more serious position reduction or abolishment. Employees earn sick and annual leave and continue to receive service credit as if the furlough had not occurred. (1/1/00)
- C. Victim protection is a type of unpaid leave granted for up to twenty-four hours (prorated for part-time employees) per fiscal year for victims of stalking, sexual assault, or domestic abuse or violence. An employee must have one year of state service to be eligible and have exhausted all annual and, if applicable, sick leave. Leave is available for seeking a restraining order, health care for the employee or employee's children, securing or seeking safe housing, and seeking legal assistance and participating in legal matters. An appointing authority may require documentation of the need for leave. All information related to the leave shall be confidential and maintained in separate confidential files with limited access. Retaliation against an employee is prohibited; however, this procedure does not prohibit adverse employment action that would have otherwise occurred had the leave not been requested or used. (5/30/03)

### **Family/Medical Leave (FML)**

- P-5-24. The state is considered to be a single employer under the Family and Medical Leave Act (FMLA) so the following provisions apply to all employees in the state personnel system. This section fulfills part of the notice requirements under the FMLA.
- P-5-25. FML is granted to eligible employees for: (1) birth and care of a child and must be completed within one year of the birth; (2) placement and care of an adopted or foster child and must be completed within one year of the placement; (3) the serious health condition of an employee's parent, child, or spouse for physical care or psychological comfort; or, (4) an employee's own serious health condition. Definitions of a serious health condition and health care provider are in the "Definitions" chapter.
- P-5-26. To be eligible, an employee must have one year of total state service as of the date leave will begin. Such service is time on the payroll, regardless of employee type, and need not be consecutive time. If temporary, the employee must also have worked 1250 hours within the 12 months prior to the date leave will begin. Time worked includes overtime hours and paid leave (excludes any type of unpaid leave). If the employee has worked full time, up to 520 hours per fiscal year will be granted. If part time, the amount of leave is prorated based on the regular appointment or schedule. If a part-time employee works an irregular, variable schedule, the amount of leave is prorated based on the average number of hours worked in the 12 weeks prior to the beginning of the leave (rounded to the nearest 1/100 of a hour). Any extension of leave beyond the amount entitled to is not FML and is subject to other provisions in these chapters. Requiring an employee to use more FML than needed is not permitted. (2/1/01)
- P-5-27. In the case of a serious health condition and when medically necessary, FML can be used on an intermittent basis or with a reduced work schedule. Requests for intermittent leave or a reduced schedule in other circumstances may be granted at the sole discretion of the appointing authority. To accommodate such requests, the appointing authority may temporarily transfer the employee to another position. No temporary reduction in schedule is allowed until all paid personal leave is exhausted.
- P-5-28. All other types of leave run concurrently with FML and do not extend the time the employee is entitled to. The employee must use all accrued personal leave subject to the conditions for use of such leave before being placed on unpaid leave for the remainder of FML, except for workers' compensation and compensatory time. Compensatory time is not leave and is not counted against the employee's FML entitlement. In the case of workers' compensation, the employee must comply with the requirements of that plan and, although the department must make a timely designation, time is not counted

against the employee's FML entitlement as long as the employee is using paid leave to make base pay whole. In addition, an employee cannot be required to accept a temporary "modified duty" assignment even though workers' compensation benefits may be affected. (7/1/02)

P-5-29. Leave-without-pay provisions apply to any unpaid FML except the state continues to pay its portion of insurance premiums. An employee's condition that also qualifies for short-term disability benefits must comply with the requirements of that plan.

P-5-30. Employer Requirements. It is the appointing authority's responsibility to designate and notify the employee whether requested leave qualifies as FML based on the information provided by the employee, regardless of the employee's desires. Family/medical leave cannot be waived. The appointing authority is expected to obtain the necessary information to make the proper designation. Such designation must be made within two business days, absent extenuating circumstances, after the appointing authority is aware of the reason for the leave. The appointing authority must notify the employee in writing of the employee's rights and responsibilities under FML. This notice requirement is met with the **State of Colorado Employer Notification** form (or equivalent). A copy of this notice must be maintained in the proper official file. The appointing authority may provide a verbal designation but it must be confirmed in writing, with the notice within one week. FML may be approved conditionally pending receipt of required documentation, e.g., medical certificate, proof of familial relationship. Documentation of any dispute over the designation must be placed in the proper official file.

A. If the appointing authority is aware of the reason for leave, either before or during the leave, and fails to designate it as FML in a timely manner, any leave used prior to the notice cannot be designated as FML. The employee receives all of the protections of FML, but the absence preceding the designation may not be counted against the FML entitlement.

B. FML cannot be designated retroactively once the employee returns to work unless: (1) the appointing authority was not aware of the reason for the leave until the employee returned; or, (2) the leave was conditionally designated as FML pending receipt of certification. Upon receipt of the information, the appointing authority must designate and notify the employee in a timely manner whether the leave qualifies as FML, including confirming or withdrawing a conditional designation.

P-5-31. Employee Requirements. The employee is to provide 30 days advance written notice, or as soon as it is practical, of the need for leave. "As soon as practical" means within two business days, if feasible, after the employee requests the leave and it may be verbal followed by written confirmation. Failure to provide timely notice when the need for leave is foreseeable, and there is no reasonable excuse, may delay the start of FML for up to 30 days after notice is received as long as it is designated as FML in a timely manner. Advance notice is not required in the case of a medical emergency. In such a case, notice may be given by any means and by an adult family member or other responsible party if the employee is unable to do so personally.

P-5-32. The employee shall consult with the appointing authority to: establish a mutually satisfactory schedule for intermittent treatments and a periodic check-in schedule; report a change in circumstances; make return to work arrangements, etc.

P-5-33. The employee is required to provide proper medical certification, including additional medical certificates and fitness-to-return certificates as prescribed under sick leave. Failure to provide certification in a timely manner may result in a delay of starting or continuing FML. If the required documents are never provided, the leave is not FML and the employee is covered by the other provisions of this chapter.

P-5-34. Benefits coverage continues during FML. If the employee is on paid FML, premiums will be paid through normal payroll deduction. If the FML is unpaid, the employee must pay the employee share of premiums as prescribed by benefits and payroll procedures.

- P-5-35. Upon return to work, the employee is restored to the same, or an equivalent, position, including the same pay, benefits, location, work schedule, and other working conditions. If the employee is no longer qualified to perform the job (e.g., unable to renew an expired license), the employee must be given an opportunity to fulfill the requirement. If the employee is no longer able to perform the essential functions of the job due to a continuing or new serious health condition, the employee does not have restoration rights under FML and the appointing authority may use P-5-10 subject to any applicable ADA provisions. The employee does not have restoration rights if the employment would not have otherwise continued had the FML leave not been taken, e.g., discharge due to performance, layoff, or the end of the appointment. (2/1/01)
- P-5-36. FML does not prohibit adverse action that would have otherwise occurred had the leave not been taken. (1/1/00)
- P-5-37. The use of FML cannot be considered in evaluating performance. If the performance plan includes an attendance factor, any time the employee was on FML cannot be considered.
- P-5-38. Records. Federal law requires that specified records be kept for all employees taking FML. These records must be kept for three years. Any medical information must be maintained in a separate confidential medical file in accordance with ADA requirements and Chapter 1.
- P-5-39. Injury Leave. An employee, other than an employee in provisional status or temporary status, who suffers an injury or illness in the line of duty that is compensable under the Workers' Compensation Act shall be granted injury leave up to 90 working days with full pay if he assigns, endorses, or otherwise causes his temporary compensation to be paid to his employing agency. (1/1/97)
- A. If after 90 working days of injury leave an employee still is unable to work, the injury leave shall be terminated and the employee placed, on a "make whole" basis, first on accrued sick and annual leave, and after exhaustion of all paid leave, may be given leave without pay. Workers' compensation payments after termination of injury leave shall be made to the employee. (1/1/97)
  - B. If the employee is unable to return to work after using all sick and annual leave, the appointing authority may invoke the provisions of P-5-10. Termination of service under that provision will in no way affect continuation of payments under the Workers' Compensation Act. (1/1/97)
  - C. If a determination is made that the injury or occupational disease was caused by willful misconduct of the employee or by willful disobedience of reasonable rules or regulations, and the temporary compensation payment is reduced because of any such reasons, the employee shall not be entitled to or be granted injury leave. Any absence resulting from the injury or occupational illness shall be charged, on a "make whole" basis, as accrued sick or annual leave, then at the option of the appointing authority, leave without pay may be granted and the temporary compensation payments shall be made to the employee. (1/1/97)
  - D. If an employee incurs injury which is compensated by no-fault insurance for the first 3 days and for which the carrier or third-party administrator made no compensation, the employee shall not be entitled to or be granted injury leave for those 3 days unless he endorses the no-fault insurance payment over to the employing department. (1/1/97)

## **Chapter 6 Performance**

### **General Principles**

- R-6-1. Employees represent the state so they are required at all times to use their best efforts to perform assigned tasks promptly and efficiently and to be courteous and impartial in dealing with those served. Employees may be rewarded based on their level of performance.
- R-6-2. A certified employee shall be subject to corrective action before discipline unless the act is so flagrant or serious that immediate discipline is proper. The nature and severity of discipline depends upon the act committed. When appropriate, the appointing authority may proceed immediately to disciplinary action, up to and including immediate termination. (5/1/03)

### **Performance Management**

- R-6-3. Appointing authorities and designated raters are responsible for communicating the department's performance pay program and the performance expectations and standards, including an individual written performance plan, and for evaluating performance in a timely manner in accordance with rule and procedure. (5/1/01)
- P-6-1. The director shall establish guidelines governing the performance pay system. The performance pay system does not apply to employees in the Senior Executive Service or medical plan. Departments must develop a performance pay program that includes performance management, performance pay, and dispute resolution components of the performance pay system that is approved by the director before implementation. All employees shall be evaluated, in writing, at least annually based on the past year's performance. If the employee moves to a position under another appointing authority or department during a performance cycle, an interim overall evaluation shall be completed and delivered to the new appointing authority or department within 30 days of the effective date of the move. These guidelines shall be used in a timely manner by all appointing authorities and designated raters, including any person employed by the state who supervises an employee. The department's performance management component must include the following. (5/2/04)
  - A. A detailed training plan for employees and raters. Training is mandatory for all raters.
  - B. Incorporate into each individual performance plan and evaluation the statewide, uniform core competencies defined by the director. The statewide, uniform core competencies cannot be disregarded in the final overall rating for each employee. (9/1/01)
  - C. Develop a performance evaluation form.
  - D. The first statewide uniform performance cycle shall end no later than March 31, 2006. All subsequent performance cycles shall be April 1 to March 31. (5/2/04)
  - E. A planning meeting with the employee that shall occur by the date specified in the department's performance pay program.
  - F. Allow for coaching and feedback during the performance cycle including at least one documented progress review.
  - G. Specify whether the performance evaluations are numerical, qualitative, or a combination that conforms to one of the four performance pay system's rating levels. The director shall define the performance rating levels and publish these standard definitions in written directives. Before the first statewide uniform performance cycle, a department's performance pay program and forms shall contain the standard definitions. (5/2/04)
  - H. Shall not establish a quota for the number of employees allowed to receive any of the

performance ratings. (5/2/04)

- I. Develop an accountability component to ensure compliance with the performance pay system and the department's performance pay program. Such plans shall specify the sanctions, including those required by these provisions and statute, to be imposed for any rater employed by the state who fails to complete the performance plan or evaluation. (5/2/04)
  - J. Specify the minimum common criteria for distinguishing performance salary adjustments. These criteria must describe how these standards reflect the department's mission and operational needs and how the requirement for consistent treatment of similarly situated employees is met. (5/2/04)
    - 1. Source of funds (e.g., cash or general), method of funding (e.g., appropriated or memorandum of understanding), and length of state service shall not be criteria. (5/2/04)
  - K. A description of the department's review process to monitor the quality and consistency of performance ratings within the department before final overall ratings are provided to employees. (9/1/01)
- P-6-2. Designated raters shall be evaluated on their performance management and evaluation of employees. Absent extraordinary circumstances, failure to plan and evaluate in accordance with the department's established timelines results in a corrective action and ineligibility for a performance salary adjustment. If the individual performance plan or evaluation is not completed within 30 days of the corrective action, the designated rater shall be disciplinarily suspended in increments of one workweek following the pre-disciplinary meeting. (5/2/04)
- A. The rater's evaluation of an employee must be signed by a reviewer. If the rater fails to complete an individual performance plan or evaluation, the reviewer is responsible for completion. If the reviewer fails to complete the plan or evaluation, the reviewer's supervisor is responsible, on up the chain of command until the plan or evaluation is completed as required. If a rating is not given, the overall evaluation shall be satisfactory until a final rating is completed. (7/1/01)
- R-6-4. An unsatisfactory performance rating may result in a performance improvement plan or a corrective action and a reasonable amount of time must be given to improve. A performance improvement plan is not a corrective action. If performance is still unsatisfactory at the time of reevaluation under a performance improvement plan, a corrective action shall be given. If performance is still unsatisfactory at the time of reevaluation under a corrective action, the appointing authority may take disciplinary action up to and including demotion or termination. (3/30/03)
- P-6-3. Each department director will report required information to the director by the specified deadline.

### **Corrective And Disciplinary Actions**

- R-6-5. An employee may only be corrected or disciplined once for a single incident but may be corrected or disciplined for each additional act of the same nature. Corrective and disciplinary actions can be issued concurrently.
- R-6-6. The decision to take corrective or disciplinary action shall be based on the nature, extent, seriousness, and effect of the act, the error or omission, type and frequency of previous unsatisfactory behavior or acts, prior corrective or disciplinary actions, period of time since a prior offense, previous performance evaluations, and mitigating circumstances. Information presented by the employee must also be considered.

- R-6-7. Corrective and disciplinary actions are subject to the “Dispute Resolution” chapter. An appointing authority who has decided to discipline may also discuss alternatives with the employee in an attempt to reach a mutually acceptable resolution. If no resolution is reached, the employee retains the right to appeal. When resigning in lieu of disciplinary action, the employee forfeits the right to file any appeal.
- R-6-8. Corrective action is intended to correct and improve performance or behavior and does not affect current base pay, status, or tenure. It shall be a written statement that includes the areas for improvement, the actions to take, a reasonable amount of time, if appropriate, to make corrections; consequences for failure to correct; and, a statement advising the employee of the right to grieve and the right to attach a written explanation. It may also contain a statement that the corrective action will be removed from the official personnel records after a specified period of satisfactory compliance. A removed corrective action cannot be considered for any subsequent personnel action.
- R-6-9. Disciplinary actions may include, but are not limited to, an adjustment of base pay to a lower rate in the pay grade, prohibitions of promotions or transfers for a specified period of time, demotion, dismissal, and suspension without pay, subject to FLSA provisions. Administrative leave during a period of investigation is not a disciplinary action. Reasons for discipline include: (3/30/03)
1. failure to perform competently;
  2. willful misconduct or violation of these or department rules or law that affect the ability to perform the job;
  3. false statements of fact during the application process for a state position;
  4. willful failure to perform, including failure to plan or evaluate performance in a timely manner, or inability to perform;
  5. final conviction of a felony or other offense of moral turpitude that adversely affects the employee’s ability to perform the job or may have an adverse effect on the department if employment is continued. Final conviction includes a no contest plea or acceptance of a deferred sentence. If the conviction is appealed, it is not final until affirmed by an appellate court; and,
  6. final conviction of an offense of a Department of Human Services’ employee subject to the provisions of C.R.S. 27-1-110. Final conviction includes a no contest plea or acceptance of a deferred sentence. If the conviction is appealed, it is not final until affirmed by an appellate court.
- A. An employee who is charged with a felony or other offense of moral turpitude that adversely affects the employee’s ability to perform the job or may have an adverse effect on the department may be placed on indefinite disciplinary suspension without pay pending a final conviction. If the employee is not convicted or the charges are dismissed, the employee is restored to the position and granted full back pay and benefits. Department of Human Services’ employees charged with an offense as defined in C.R.S. 27-1-110 may be indefinitely suspended without pay pending final disposition of the offense.
- B. If the Board or administrative law judge finds valid justification for the imposition of disciplinary action but finds that the discipline administered was arbitrary, capricious, or contrary to rule or law, the discipline may be modified.
- R-6-10. When considering discipline, the appointing authority must meet with the certified employee to present information about the reason for potential discipline, disclose the source of that information unless prohibited by law, and give the employee an opportunity to respond. The purpose of the meeting is to exchange information before making a final decision. The appointing authority and employee are each allowed one representative of their choice. Statements during the meeting are not privileged.
- A. When reasonable attempts to hold the meeting fail, the appointing authority must send a written notice, to the last known address of the employee, advising the employee of the



possibility of discipline and stating the alleged reasons. The employee has 10 days from receipt of the notice to respond in writing. If the employee refuses to accept the notice, a dated return receipt from a mail carrier is conclusive proof of the attempt to deliver and the period to respond begins on that date. (3/1/02)

B. Repealed 1/1/00.

R-6-11. The person conducting the meeting is responsible for the decision to take disciplinary action. The decision is made after consideration of all written and verbal information collected.

R-6-12. A written notice of disciplinary action must be sent by certified mail or may be hand-delivered to the employee. The employee must receive the notice no later than five days following the effective date of the discipline. The notice must state the specific charge, the discipline taken, and right to appeal. Employees may submit a written statement to be attached to disciplinary action. (3/30/03)

A. If the employee refuses to accept the notice, a dated return receipt from a mail carrier is conclusive proof of the attempt to deliver.

## **Chapter 7    Separation**

### **General Principles**

- R-7-1. The appointing authority must communicate, or make a good-faith effort to communicate, with an employee before conducting any involuntary separation. The communication may be oral or written, and must provide an opportunity for the appointing authority and employee to exchange information about the separation. (5/1/02)
- R-7-2. The Governor, director, and all appointing authorities may consider alternatives to minimize or avoid the need for layoffs of employees in the state personnel system including, but not limited to, placement into vacant positions for which the laid off or displaced employees are qualified but for which they do not have retention rights, retraining, voluntary reduction in hours or pay, voluntary leave without pay, voluntary furloughs, and voluntary separation incentives. (5/1/02)
- R-7-3. Appointing authorities cannot use the layoff process as a substitute for disciplinary or corrective action. The layoff process should not prevent or interfere with other personnel actions. (5/1/02)

### **Resignation**

- R-7-4. An employee must give written notice of resignation at least 10 working days before its effective date, unless the employee and appointing authority mutually agree to less time. If the notice is oral, the appointing authority shall provide written confirmation as soon as possible. If the employee believes the resignation was coerced or forced, the employee has 10 days from the date of the resignation to appeal to the Board, except that an employee cannot appeal a resignation that is tendered in lieu of disciplinary action. (5/1/02)
- R-7-5. An employee may withdraw a resignation within two business days after giving notice of resignation. The appointing authority has discretion to approve a request to withdraw a resignation that is made more than two business days after the notice of resignation. (5/1/02)
- R-7-6. If an employee is absent without notice for five or more scheduled consecutive working days and has not contacted the supervisor or appointing authority to provide information about the reason for the absence, the appointing authority may construe that absence as an automatic resignation. The appointing authority shall give the employee written notice, by certified mail, of the effective date of the employee's resignation. The employee is ineligible for reinstatement. (5/1/02)

### **Layoff Principles**

- R-7-7. The only reasons for layoff are lack of funds, lack of work, or reorganization. These rules apply to any reduction in force that results in the elimination of one or more positions regardless of the reason for the layoff. (5/1/02)
  - A. Reorganization means a change in the fundamental structure, positions, and/or functions accountable to one or more appointing authorities. The department shall post a business plan documenting the reorganization in a conspicuous place before issuing the first layoff notice. This plan must include an organizational chart, the reasons for the change, the anticipated benefits and results, and a general description of the expected changes and their effects on employee.
  - B. If a position is allocated downward and the employee elects not to remain in the position, the employee will be laid off or given retention rights pursuant to the provisions of this chapter. If a position is reallocated and the employee does not remain in the position, the employee will be laid off or given retention rights.
  - C. Repealed 5/1/03.

- R-7-8. Departments must consider seniority and performance in making layoff decisions. Departments may consider other factors in addition to seniority and performance. (5/1/02)
- R-7-9. In making layoff and retention rights decisions, departments shall use time bands to determine seniority. Departments shall also develop a matrix calculation for ranking priorities within the time bands. (5/1/02)
- R-7-10. Trial service employees whose performance is satisfactory are treated as if certified in the trial service class during the layoff process. Conditional employees have retention rights to their previously certified class. (5/1/02)
- R-7-11. Full-time certified employees whose positions are reduced to part time are eligible for retention rights. Full-time employees shall be offered other full-time positions before part-time. Part-time certified employees whose positions are increased to full time are eligible for retention rights. Part-time employees shall be offered other part-time positions before full-time. A full-time employee who accepts a part-time position and a part-time employee who accepts a full-time position may choose to be placed on a departmental reemployment list. (5/1/02)

### **Notice Requirements**

- R-7-12. The department must provide written notice to certified employees who are to be laid off at least 45 calendar days before the layoff is effective. The layoff notice must give the employees at least three working days from the date of delivery to state whether they want the department to determine their retention rights. If the department offers retention rights, it must give the employees at least three working days to accept or reject the offer. The layoff notice may be hand-delivered or sent by certified mail, in which case it is deemed delivered when it is actually received or five days after the certified mailing, whichever is earlier. (3/30/03)
- A. The department must provide written notice to certified employees who are being displaced by another employee at least 10 business days before the displacement. A displaced certified employee who is separated shall be paid for at least 22 working days after receipt of the notice of displacement.
- B. The department must provide written notice to non-certified employees who are to be laid off at least 10 business days before the layoff is effective.

### **Retention Areas**

- R-7-13. A certified employee may exercise retention rights within the principal department. Institutions of higher education have the following separate retention areas: each state college, each community college, each university, each campus of the University of Colorado, University of Colorado system administration, each junior college, Auraria Higher Education Center, central staff of Community Colleges of Colorado, and central staff of the Trustees of State Colleges. Certified employees of the Department of Higher Education have retention rights in central staff, Colorado Historical Society, Colorado Student Loan Program, and Council on the Arts. A department may limit retention rights to major divisions of the department only if its director requests the limitation and the Board approves that request in advance of the layoff. (3/30/03)

### **Determining Priorities For Layoff And Retention Rights**

- R-7-14. Time bands for each affected class are established for three-year periods based on seniority. The three-year period begins with the calendar year in which the layoff notice is given and extends backward, e.g., a notice issued in 2002 creates the most junior time band of 2000-2002. Employees in the most junior time band must be displaced before employees in more senior time bands. (5/1/02)

R-7-15. For purposes of layoff, seniority is the calendar year in which continuous state service began, including up to 10 additional years (rounded to the next whole year for partial years) of military service for those eligible for veteran's preference. (5/1/02)

- A. Continuous state service includes permanent status and state employment outside the state personnel system when there is no break in service. A certified employee who has a break in service of less than 90 days, time on a departmental reemployment list or waiting for retention rights, or approved leave receives credit for continuous state service during those periods. If a certified employee has a break in service of more than 90 days, previous state service does not count toward seniority during layoff.

R-7-16. The department director must establish a matrix for ranking employees within a time band. The matrix must be consistently applied throughout the retention area. The matrix must be communicated to all employees at least 15 days before the first layoff notice is issued. Employees with lower matrix rankings in the time band must be displaced before employees with higher matrix rankings, except no veteran can be displaced before a non-veteran regardless of rank. (5/1/02)

R-7-17. The matrix must give at least 51% of the total value to performance measured by the average of the latest three years' annual performance ratings. Each retention area must establish a consistent numerical value for each level of performance. If an employee does not have performance evaluations for any of the past three years, any missing rating is considered to be satisfactory for purposes of this calculation. (5/1/02)

### **Retention Rights**

R-7-18. An employee must meet the minimum qualifications and any bonafide special qualifications in order to have retention rights to a position. Certified employees can displace certified employees in more junior time bands. If there are no junior time bands, certified employees can displace lower-ranked certified employees in the same time band. The department shall offer retention rights in the following priority: (5/1/02)

1. Funded vacant position in the current certified class. If there are no vacant positions, occupied positions are offered in the following order: provisional, probationary, conditional, certified.
2. Funded vacant position in a previously certified class at the same maximum pay rate. If there are no vacant positions, occupied positions shall be offered in the following order: provisional, probationary, conditional, certified.
3. Highest level demotion in a vacant position in the current or previously certified class series. If there are no vacant positions, occupied positions shall be offered in the current or previously certified class in the following order: provisional, probationary, conditional, certified. An employee can displace another certified employee only if the displacing employee has been certified in the class.

- A. Employees in the Teacher I class have retention rights to their academic achievement levels.

R-7-19. If the highest-level retention opportunity is within a 50-mile radius of the current location, only that position is offered. If the highest-level retention opportunity is outside the 50-mile radius, that position is offered along with the highest-level demotion inside the 50-mile radius. If the employee accepts an offer outside the 50-mile radius, that employee can claim moving expenses as prescribed in Fiscal Rule. (5/1/02)

R-7-20. If a certified employee is laid off or demoted due to a downward allocation or layoff, the employee is placed on a departmental reemployment list. If an employee refuses a retention offer, the employee is laid off and placed on the departmental reemployment list. (5/1/02)

R-7-21. Repealed 12/31/03.

R-7-22. Repealed 12/31/03.

R-7-23. Repealed 12/31/03.

R-7-24. Repealed 12/31/03.

**Record Keeping**

R-7-25. Department directors must provide any required or requested information to the director or Board in a timely manner. (5/1/02)

## Chapter 8    Dispute Resolution

### General Principles

- R-8-1. Disputes should be resolved at the lowest level and as informally as possible. Fair and unbiased resolutions should be reached as quickly as possible. Parties are encouraged to use alternative dispute resolution methods in an attempt to reach early solutions.
- R-8-2. Appeals may be dismissed if the employee or applicant does not keep the Board or director informed of the proper mailing address, fails to appear for a hearing, or if the appeal does not meet the requirements of these rules and procedures. (1/1/00)
- R-8-3. Any person may file a complaint concerning a state employee's action. If the complaining party is an employee in the same agency, the grievance procedure is to be used. Any person outside the agency or the state personnel system shall file a written complaint with the appointing authority within a reasonable time period. The appointing authority will review a complaint and take the appropriate action, which may be no action. (1/1/00)

### Notice Of Rights

- R-8-4. Affected persons shall be informed, in writing, of any rights to dispute a corrective action or an action that adversely impacts pay, status, tenure, or a performance rating and award. Such a notice must include the time limit to exercise such rights, the official and address to whom the dispute should be directed, the requirement that the dispute must be in writing, and the availability of any standard appeal form. If the dispute alleges discrimination, refer to the "allegations of discrimination" section of this chapter.

### Grievance

- R-8-5. A permanent employee may grieve matters that are not directly appealable to, or reviewable by, the Board or director. Issues pertaining to leave sharing, discretionary pay differentials, and/or a performance evaluation and its components that do not result in corrective or disciplinary action are not grievable or appealable. Use of the grievance process is not required prior to disciplining an employee based on sexual harassment. (5/1/03)
- R-8-6. Once a decision is rendered by the highest level of relief in an agency, an employee may petition to the Board for discretionary review pursuant to the discretionary Board hearing section of this chapter.
- R-8-7. If the complaining employee is no longer employed under the state personnel system, any grievance in process at the agency level is considered concluded. If an employee is restored to a position following involuntary separation, by board order or settlement or reemployment, any unrelated grievance pending at the time of separation shall be processed.
- R-8-8. Process. The grievance process is designed to address and resolve problems, not to be an adversarial process. Departments must inform employees of how to proceed through the grievance process. The parties are encouraged to utilize alternate dispute resolution techniques. Departments are allowed some flexibility to establish a grievance process. Each department must establish a process which complies with the following, and shall provide an annual copy of such for certification of compliance, to the Board. (3/1/02)
  - 1. An employee must initiate the grievance process within 10 days of the action or occurrence being grieved; or within 10 days after the employee has knowledge of, or reasonably should have knowledge of, the action or occurrence. To initiate the grievance process, the employee shall notify the supervisor and/or second level supervisor, as provided in the department's grievance process. An informal discussion will be held to attempt to resolve the grievance. The employee shall be

informed in writing of the decision within 7 days after the discussion. If a timely decision is not issued, the employee may proceed to the next stage of the process. (3/1/02)

2. The decision reached at the informal stage shall be binding on the parties, unless the employee elects to proceed to the formal written process. The employee has 5 days after receipt of the informal decision to initiate the formal process. The grievance must be put in writing and submitted to the appropriate individual. The final department response to the grievance will typically be issued by the appointing authority. The appointing authority may appoint an objective person or panel to make recommendations, or may delegate the decision. If the grievance concerns the actions of the appointing authority the department may, but is not required to, provide a process by which a different individual issues the final department response. Only the issues set forth in the written grievance shall be considered thereafter. The process is completed upon issuance of a final department decision, which must be in writing and issued within 30 days of the initiation of the written grievance process. Any of the time frames for completion of the grievance process may be waived or modified if agreed to by both parties. The final decision is binding unless the employee pursues it to the board. If a final decision is not issued in a timely manner, the employee may pursue the grievance with the board. (3/1/02)
3. The employee has 10 days to file a petition for hearing with the board after receipt of the final department decision, or after expiration of 30 days or any extension period. The original written grievance and the department's final decision should be attached to the petition for hearing. A copy must be provided to the person who made the department's final decision. (3/1/02)
4. An employee may be represented by any person of the employee's choice at any step(s) of the grievance process. That person may participate and speak for the employee. The employee is expected to participate in the discussion during the grievance process.
5. In the event a department fails to obtain an annual certification of compliance, it is deemed to have waived the opportunity to establish a departmental grievance process and must apply the elements established above for resolving grievances. (3/1/02)

### **Alternative Dispute Resolution (Informal problem-solving processes.)**

#### Mediation

R-8-9. At the option of either party, a mediation program of the parties' choice may be used in an attempt to resolve disputes. If a grievance is also involved, the other party must participate and time limits are suspended pending the outcome or discontinuance of mediation. Parties participating shall have authority to settle disputes at the time of mediation. (5/1/01)

R-8-10. Mediation is private, confidential, and privileged. It is conducted by a trained, unbiased facilitator who assists the parties in clarifying and understanding their different points of view, identifying common ground, generating and evaluating alternatives, and reaching a mutually acceptable resolution. Mediator notes are confidential and must be destroyed after mediation. The mediator cannot be contacted for information or called as a witness in other later proceedings. Communication during mediation is not discoverable or admissible, except for information that is required to be reported under a specific law. The costs associated with the use of a mediator are to be borne equally by the parties, unless otherwise agreed to between the parties prior to the commencement of the mediation process. State agencies and departments shall notify participants to a grievance that mediation is an available form of alternate dispute resolution. (5/1/01)

R-8-11. Both parties shall review any agreement before signing it. If the agency fails to comply with the terms of the agreement, a grievance may be filed. If the employee fails to comply with the terms of the agreement, such action may be subject to performance evaluation, corrective or disciplinary action.

### Settlement

- R-8-12. Subsequent to filing an appeal or petition, either party may ask the Board staff to facilitate the settlement process and the Board will provide a facilitator. If either party to an appeal makes such a request, the other party must appear at least once at a conference and make a good faith effort to settle. If a motion states specific reasons why settlement is inappropriate, the administrative law judge can waive the requirement. (1/1/00)
- R-8-13. The settlement process is private, confidential, and privileged unless the information disclosed is required to be reported under specific law.
- R-8-14. Proceedings are closed to any individual other than the principal disputing parties and their representatives, without the consent of the facilitator.
- R-8-15. All notes are kept in a separate file and are not accessible to the administrative law judge assigned the appeal. At the end of the conference, the files must be destroyed. There will be no communication regarding the substance of the settlement negotiations between the facilitator and the administrative law judge hearing the appeal.
- R-8-16. The facilitator cannot be a witness in any proceeding on the subject matter. Communication between the parties at the settlement conference is not admissible. However, this does not bar admission of evidence discovered by a party outside the settlement conference.
- R-8-17. Any agreement reached shall be reviewed by both parties prior to signature.
- R-8-18. If the agency does not comply with the terms of the agreement, the employee may petition for a hearing. If the employee does not comply with the terms of the agreement, the action is subject to the provisions in the "Performance" chapter.

### Arbitration

- R-8-19. Parties may enter into a stipulation for dismissal of the appeal and diversion to arbitration under the Uniform Arbitration Act. The stipulation must include both parties' knowing and voluntary waiver of all appeal rights under the state personnel system. The arbitrator's award cannot order any action that violates state personnel rules and procedures or provisions of constitution or law or affect the rights of any individual who has not agreed to be a party in the proceeding.

### **Declaratory Orders**

- R-8-20. Any person may petition for a declaratory order to clarify the applicability of statute or Board rule or order to the petitioner. It is within the Board's discretion, without notice, whether to rule upon any petition and notify the petitioner. The Board may consider factors including, but not limited to, whether a declaratory order will terminate the uncertainty or controversy giving rise to the petition; whether the petitioner has another remedy or avenue for review of the controversy; whether there is another case or investigation pending before the Board, a court, or another agency involving the controversy; and whether the issue is ripe for review. The Board may grant the petition for declaratory order and order that the matter be set for hearing, order briefing on the issues presented in the petition, or deny or dismiss the petition. Any action is subject to judicial review. Any petition must include: petitioner's name and address; whether petitioner is a state personnel system employee; the related statute or Board rule or order; and, a concise factual statement of the issues involved. The Board may deny any petition that does not contain all of this information. (5/1/03)

### **Investigation Of Retaliation For Disclosure Of Information**



- R-8-21. An employee who alleges retaliation for disclosure of information may file a complaint with the Board in accordance with C.R.S. 24-50.5-101 et seq. ("whistle blower act").
- R-8-22. The Board will send a copy of the complaint to the agency for an initial response. The original and one copy of the response must be filed within 45 days after the date the complaint was filed with the Board. (3/30/03)
- R-8-23. The Board will notify the employee of the notice requirements of the Governmental Immunity Act, C.R.S. 24-10-101 et seq.
- R-8-24. The complaint and response will be referred to the director for investigation. If the complaint is against the director, the Board will appoint an appropriate investigator from outside the agency. A written report will be provided to the Board within 45 days of receipt. This time may be extended by the Board upon a showing of good cause. The Board will send the written report to both parties. (1/1/00)
- R-8-25. If it is found that there is a reasonable basis for the complaint, the agency may file an appeal with the Board within 10 days of receipt of the report. A timely appeal will be set for evidentiary hearing.
- R-8-26. If it is found that there is no reasonable basis for the complaint, and an appeal was also filed asserting a constitutional or statutory right to a hearing, and the appeal and complaint relate to the same or closely related facts, they may be consolidated for evidentiary hearing. Either party may request, or the administrative law judge may order, consolidation if it would be more efficient and would not unduly prejudice any party.
- R-8-27. If it is found that there is no reasonable basis for the complaint and the employee does not have a constitutional or statutory right to a hearing, the case will be set for preliminary review.
- R-8-28. If it is found that there is no reasonable basis for the complaint, the employee may file a complaint in district court, regardless of any constitutional or statutory right to a hearing before the Board. A complaint filed in court will not be subject to consolidation nor will the Board have any jurisdiction over it.

### **Allegation Of Discrimination**

- R-8-29. Allegations of discrimination, including those involving grievances, appeals or the performance pay program dispute resolution, must also be filed with the Board. Except for appeals, the Board will defer action to allow the parties a chance to resolve the issue. If not resolved, the employee may file a petition for hearing within 10 days of receipt of the grievance, appeal or performance pay program dispute resolution decision. (5/1/01)
- R-8-30. Upon receipt of an appeal or a petition for hearing on matters covered by C.R.S. 24-34-402, the Board will refer the matter to the Colorado Civil Rights Division (CCRD) for investigation. If the allegation is against the CCRD, the Board shall appoint an independent third party to investigate. The Board will issue a notice of referral to the CCRD. If the employee wants CCRD to investigate the discrimination claim, the employee must file a discrimination charge with the CCRD within 15 days of receipt of the notice of referral. The employee must file a verification form with the Board no more than 10 days after filing the CCRD charge, with a copy to the respondent. (3/30/03)
- R-8-31. Any time an appointing authority is aware of an allegation of discrimination based on disability, the matter must be referred to the agency's ADA coordinator for investigation, no later than 7 days from the date of the allegation. This includes grievances and meetings to consider adverse action against the employee. Any time limits are suspended pending the investigation.
- R-8-32. For claims that fall under C.R.S. 24-34-402, an employee can waive the right to investigation and proceed to preliminary review or hearing any time prior to completion of the investigation. The date

of written notice of waiver of investigation is the date of appeal to begin the 45-day hearing period. If no specific, written charge is filed with the CCRD within 15 days of receipt of the referral order from the Board, or if the employee fails to file a verification form with the Board, the employee is deemed to have waived investigation and the matter will proceed to preliminary review or hearing. (3/30/03)

R-8-33. Repealed 2/1/01.

R-8-34. If the investigation is not completed within 270 days, absent granting a time extension, the Board will notify the parties and set the matter for preliminary review or hearing.

R-8-35. When the investigation is complete, a written opinion of probable cause or no probable cause will be prepared. The Board will mail the opinion to the parties along with notice of their rights.

R-8-36. If probable cause is found in the CCRD investigation, CCRD will attempt to conciliate. If conciliation succeeds, the results and any settlement agreement will be sent to the Board. The Board will notify the parties by mail. If attempts fail, CCRD will notify the Board in writing. The Board will notify the parties by mail, including informing them of the right to appeal within 10 days of the Board's notice. If a party appeals the probable cause finding, the issue of discrimination shall be set for hearing. (2/1/01)

R-8-37. If no probable cause is found in the CCRD investigation, CCRD will send the opinion to the Board who will notify the parties in writing by mail. The employee or applicant may appeal within 10 days of receipt of the opinion. If the employee fails to file an appeal or petition, the discrimination claim is considered abandoned and dismissed, and the matter will proceed without consideration of the issue of discrimination. (2/1/01)

### **Attorney Fees And Costs**

R-8-38. Attorney fees and costs may be assessed, upon final resolution of a personnel action, against a party as follows:

- A.
  - 1. If the personnel action is found to have been instituted frivolously. A frivolous personnel action shall be defined as an action or defense in which it is found that no rational argument based on the evidence or the law is presented. (3/30/03)
  - 2. If the personnel action is found to have been made in bad faith, was malicious, or was used as a means of harassment. Such a personnel action shall be defined as an action or defense in which it is found that the personnel action was pursued to annoy or harass, was made to be abusive, was stubbornly litigious, or was disrespectful of the truth. (3/30/03)
  - 3. If the personnel action is found to have been groundless. A groundless personnel action shall be defined as an action or defense in which it is found that despite having a valid legal theory, a party fails to offer or produce any competent evidence to support such an action or defense. (3/30/03)
- B.
  - 1. A party seeking an award of attorney fees and costs must provide notice to the Board and all parties of its intent to seek an award of attorney fees and costs. (3/30/03)
  - 2. If a party requests an award of attorney fees and costs, each party shall be given an opportunity to present evidence on the issue. (3/30/03)
  - 3. The party seeking an award of attorney fees and costs shall bear the burden of proof with regard to whether or not a personnel action is frivolous, in bad faith, malicious, harassing, or otherwise groundless.

## **General Appeal Process**

R-8-39. Filing Deadlines. Any appeal is timely if it is received or postmarked within 10 days after receipt of the written notice of the action. Any appeal that is not timely will be denied except for the following.

- A. If the 10th day falls on a weekend or legal state holiday (regular schedule), the time period will be extended to the next regular business day.
- B. For appeals to the Board, the Board may extend the period of time for good cause as long as the request for extension is received or postmarked within the 10-day appeal period. The Board shall add up to three days to the date of notice if it was not sent by certified mail; however, the 10-day period begins to run from the actual date of receipt.

R-8-40. An appeal must be submitted to either the Board or director at: (11/1/99)  
Attn: Appeals Processing  
1120 Lincoln Street, Suite 1420  
Denver, CO 80203

R-8-41. Contents. The appeal must be in writing and copies provided concurrently to the affected agency. Use of the standard appeal form is encouraged. The appeal must clearly state the following in sufficient detail.

- 1. The name, address, and telephone number of the appellant and any representative.
- 2. The specific action being appealed and a copy of the written notice.
- 3. The date the appellant received the notice of action. (Attach a copy of the notice.)
- 4. A short, specific statement giving the reason for the appeal.
- 5. Whether the appellant is a certified employee.
- 6. The specific remedy sought.

R-8-42. Motions. The moving party must file the original with the Board or director, whoever has jurisdiction over the case. A copy must also be provided to the opposing party(s). (2/1/01)

- A. Due to time limits to resolve appeals, motions should be filed as early as possible prior to hearing. When a substantive motion is filed, the responding party has 10 days to file a response. If there is less than 10 days before a hearing, the responding party may provide a written or oral response at the hearing. If no response is filed, the motion may be accepted and deemed to be confessed. (3/30/03)

R-8-43. If the notice of appeal does not contain sufficient or appropriate grounds for filing an appeal, the director or Board may dismiss the appeal with prejudice. Employees are required to keep the Board or director, as appropriate, informed of current address and to attend any required meetings or hearings. If either party does not follow these procedures, the director or Board may take appropriate action, including dismissal with prejudice.

R-8-44. The determination of timeliness of any subsequent documents will be the date of receipt in the Board's or director's office, whoever has jurisdiction over the case. Whenever a person or party files any documents with the director or Board, copies must be provided to the opposing party at the same time.

## **Discretionary Board Hearings**

R-8-45. The Board may use its discretion to grant a hearing for actions that do not adversely affect a certified employee's current base pay, status, or tenure, and where the employee does not have a right to a hearing, appeal, or review by law or rule. The Board may grant a hearing in matters such as a violation of constitutional rights, an adverse written decision from the highest level of a department's grievance process, a decision from the "director's review process" involving the overall administration

of the state personnel system (refer to later in this chapter), unlawful discrimination where there is no mandatory right to a hearing, including discrimination in the selection and examination process, and reversion of a trial service employee for unsatisfactory performance. The Board cannot grant a hearing to probationary employees who appeal discipline for unsatisfactory performance unless the employee alleges unlawful discrimination or other statutory or constitutional violation. (5/1/03)

- R-8-46. The written petition for hearing must be filed within 10 calendar days after a complainant receives written notice of the action on which the petition is based, and must include a copy of the action. In the case of an opinion of no probable cause to credit allegations of discrimination or reasonable basis to find a violation of the state employee protection act (whistleblower), the written opinion is the notice of the action. Contents of the petition must be the same as those required in an appeal as listed above. (3/30/03)
- R-8-47. Failure to provide a copy of the petition to the respondent at the same time it is filed with the Board may be grounds to deny the petition for a hearing.
- R-8-48. The action will not be reversed or modified unless it is found to be arbitrary, capricious, or contrary to rule or law.
- R-8-49. Each party will be directed to file an information sheet containing the information requested by the Board director or administrative law judge. If both parties agree, the information may be presented in person before the Board director or administrative law judge. The Board director or administrative law judge will review the information presented by the parties in their information sheets or in person to determine whether valid issues exist which merit a hearing. The complainant has the burden of demonstrating the existence of valid issues which merit a hearing by showing that there is an evidentiary and legal basis that would support a finding that the action was arbitrary, capricious, or contrary to rule or law, and that the relief requested by the complainant is within the Board's statutory authority. An administrative law judge or Board Director will make a written preliminary recommendation to the Board, with copies provided to both parties, as to whether a hearing should be granted or denied. (3/30/03)
- A. If the complainant fails to file an information sheet, the petition for hearing may be considered abandoned and dismissed. If the respondent fails to file an information sheet, the preliminary recommendation will be based solely upon the information submitted by the complainant. (3/30/03)
  - B. At any stage in the preliminary review process, the Board director or administrative law judge may request the parties to participate in a mediation conference with a trained mediator. (3/30/03)
- R-8-50. The Board will consider the preliminary recommendation and render its decision to grant or deny a hearing. If the Board grants a hearing, the date of the order will be treated as the date the appeal was submitted for purposes of determining the deadline for commencing a hearing. If the hearing is denied, the date of the order shall be used for purposes of any further appeal.
- R-8-51. If an employee files a petition for hearing and an appeal asserting a constitutional or statutory right to a hearing and the mandatory and discretionary appeals relate to the same or closely related matters, the administrative law judge or Board Director may consolidate the cases if it is determined that consolidation would be more efficient and would not unduly prejudice any party. (3/1/02)

## **Board Appeals**

- R-8-52. Any action that adversely affects a certified employee's current base pay, status, or tenure as defined by Board rule may be appealed and will be set for hearing. An adverse effect results in a reduction of current base pay or loss of other rights to which an employee is entitled by law, including denial of reemployment rights or removal from a reemployment list, probable cause opinion in discrimination

cases, appeals of investigative reports finding reasonable basis for retaliation for disclosure of information, dismissal for failure to perform satisfactorily under senior executive service contracts, and reductions of salary during the term of senior executive service contracts. Issues involving annual total compensation survey, discretionary pay differentials, leave sharing, personal services contracts, job evaluation system and actions, renewals of senior executive service contracts at a reduced salary, and removal of positions from the senior executive service pay plan into the traditional classified pay plan are not appealable. (5/1/03)

- A. Disciplinary actions are appealable and will be set for hearing, except discipline of probationary employees for unsatisfactory performance, reversion of trial service employees for unsatisfactory performance, and demotion of conditional employees to the class in which last certified. An employee who resigns in lieu of disciplinary action forfeits appeal rights.
- B. Employees who are separated for failure to perform under senior executive service contracts do not have a right to progressive discipline or to an R-6-10 meeting. In such an appeal, the appointing authority must produce evidence that the employee's performance was not satisfactory. The employee shall then have the burden of producing evidence that performance was satisfactory, and shall bear the burden of proof that the appointing authority's decision was arbitrary, capricious, or contrary to rule or law.

### **Preparation For Board Hearings**

R-8-53. **Discovery.** Preparation may be done through informal information requests or the formal discovery procedures. No specific order by an administrative law judge is needed for discovery. Without an order, the following applies to preparation for all hearings. Upon the filing of a proper motion and a showing of good cause, an administrative law judge may modify or waive the following provisions in a specific case.

- A. All requests for information, either informal or formal, other than depositions, must be submitted no later than 15 days from the date of issuance of the notice of hearing. The deadlines are not extended if the hearing is continued unless the administrative law judge orders an extension. (3/30/03)
- B. Responses to all requests for information, either informal or formal, must be provided within 20 days after receipt of the request.
- C. All exchanges of information, including depositions, must be completed at least 10 days prior to the hearing.
- D. Each party is allowed to take three depositions. Each party is allowed to submit 30 Interrogatories consisting of one question each, 20 requests for Production of Documents consisting of one request each, and 20 Requests for Admissions consisting of one admission each. (1/1/00)
- E. A party must make a good faith effort to resolve any discovery disputes prior to filing a motion to compel discovery. Failure to make such an effort may result in the imposition of sanctions against the moving party. (3/30/03)

R-8-54. A hearing may be continued only once and only for good cause. The hearing must commence no later than 90 days after receipt of the appeal. The commencement may be in person, or by telephone or videoconference where appropriate. Presentation of an opening statement, factual stipulations, or stipulated exhibits will be sufficient to constitute the commencement of the hearing. (3/30/03)

R-8-55. Both parties must attempt to resolve an appeal before the hearing. This may include settlement.

## **Board Hearings**

- R-8-56. A petition for reconsideration of the initial decision may be filed by an original party within five days of receipt of the initial decision. The administrative law judge may reconsider an initial decision without the petition within 10 days of issuance. Petitions shall be limited to matters alleged to be overlooked or misunderstood by the administrative law judge and cannot contain other arguments. Oral arguments shall not be permitted on any petition. A determination on the petition is typically issued but if no order is issued, the petition is considered denied. Filing a petition does not extend the time for filing an appeal of the initial decision.
- R-8-57. Tape recordings of a hearing shall be erased 60 days after expiration of all rights resulting from that hearing.

## **Board Review Of Initial Determination**

- R-8-58. Appeals of dismissal orders and initial decisions of the administrative law judge are made in accordance with statute. Appeals should be filed with the Board and a copy served on the opposing party, within 30 days of mailing of the order or decision. Any party who seeks review of all or part of the dismissal order or initial decision must file an appeal within 30 days, with no extensions for cross-appeals. Timely filing is determined by the date the Board actually receives the appeal. Failure to serve a copy on the opposing party may result in dismissal. The Board is required by statute to certify the record within 60 days after the date the record is designated. The Board will review and render a written decision within 90 days of the date the record is certified. (3/30/03)
- R-8-59. Any party who seeks to reverse or modify the initial decision must file with the Board a designation of record within 20 days following the date of issuance of the initial decision. A copy of this designation shall be served on all parties. Within 10 days, any other party or the Board may also file a designation of additional parts of the transcript of the proceedings which is to be included. Any appeal of the initial decision must be filed within 30 days of the date of the decision. Any appealing party shall submit appropriate payment for preparation of the record at the time the appeal is filed.
- R-8-60. Any party who designates a transcript as part of the record is responsible for obtaining and paying a certified court reporter who shall prepare the transcript and file it with the Board no more than 59 days after the designation of record. Failure to designate a transcript is deemed a waiver of a request to prepare the transcript. If no transcript has been filed within the time limit, the record will be certified and the transcript will not be included in the record or considered on appeal. In absence of a transcript, the Board is bound by the findings of fact of the administrative law judge. (3/30/03)
- R-8-61. The appeal of the initial decision shall describe, in detail, the basis for the appeal, the specific findings of fact and/or conclusions of law which are alleged to be improper, and the remedy being sought.
- R-8-62. Upon certification of the record of administrative proceedings, the parties shall be notified in writing of the date the Board will consider the appeal. The Board is required by statute to decide the appeal no more than 90 days after the certification of the record. (3/30/03)
- R-8-63. Absent specific orders to the contrary, the appellant shall serve and file the brief within 20 days after the Board certifies the record. The opposing party's brief shall be filed within 10 days after receipt of the appellant's brief. The appellant may file a reply brief within five days. Three days shall not be added for pleadings sent by mail. (1/1/00)
- A. The final brief must be filed no later than 12 days before the Board meeting where the appeal will be considered. No extensions of time will be granted unless they allow both parties to file briefs within that time limit. (3/30/03)

- B. In cases where both parties have filed an appeal, they will be ordered to file simultaneous briefs as described above unless the parties file a stipulated amended briefing schedule. (3/30/03)

R-8-64. All briefs must be typewritten and the text double spaced. They cannot exceed 10 pages and must be on 8 ½ x 11 paper. An original and nine copies must be filed with the Board and a copy must also be served on the opposition. (2/1/01)

R-8-65. For any appeal to the Board, an original and eight copies of any motion (except extension of time) must be filed. For extensions of time or motions to dismiss based upon settlement of the appeal, the original and one copy must be filed with the Board. The Board director may grant motions for extension of time or motions to dismiss based upon settlement. A copy of any motion must be served on the opposition. (3/30/03)

R-8-66. In general, no oral argument will be heard and parties need not be present before the Board. Oral arguments may be allowed at the discretion of the Board. A request for oral argument shall be filed no later than the date the requesting party's brief is due. If granted, oral argument shall not exceed 15 minutes for each party. A request for additional time may be made by motion within 10 days after the briefs are closed but granted only for good cause. If oral argument is granted, parties are given reasonable notice of the time and place. The Board may terminate the argument whenever, in its judgment, further argument is unnecessary.

R-8-67. **Security.** Security during Board meetings and Board hearings may be obtained by any party at that party's expense. Board staff will assist the parties in obtaining security when possible. (3/30/03)

R-8-68. Any employee entering or remaining in the senior executive service pay plan on or after July 1, 2003, waives retention and reemployment rights with respect to any other position in the personnel system pursuant to R-1-15, but shall have reinstatement privileges with respect to any vacant position in the employee's current or previously certified class. (5/1/03)

R-8-69. Any employee in the senior executive service prior to June 1, 2003, may choose to revert to another pay plan with saved pay not to exceed the statutory salary lid of that pay plan, or the amount received under the employee's most recent contract, whichever is less. Any person choosing to so revert shall be entitled to all of the rights of employees in the state personnel system, effective July 1, 2003. (5/1/03)

### **Director Appeals**

P-8-1. An applicant or employee who is directly affected may appeal to the director for the following. (1/1/02)

- A. An allocation of an individual position to a lower pay grade. Employees do not have the right to appeal movement of positions into or out of the Senior Executive Service.
- B. Objection to the content or conduct of an examination. A written appeal must be filed within 10 days from the date of administration of an examination component.
  - 1. Conduct refers to all activities, processes, or functions that are completed from the time the qualified applicant pool is identified to the creation of the ranked eligible list. Content refers to the subject matter of the examination. Scores and ranks are outcomes of a process and are not considered as conduct or content of an examination.

P-8-2. Any applicant or employee may make direct inquiry to the department or individual involved in matters covered by these procedures to try and achieve informal resolution. However, such discussions do not extend the appeal time limit. (7/1/02)

- P-8-3. The director will promptly acknowledge receipt of the appeal in writing and include instructions and a timetable. The director will retain jurisdiction over appeals but may appoint an advisory panel or person. The director will notify the appellant if multiple appeals are received. The 10-day appeal period for selection appeals begins with receipt of the first appeal for that examination. All parties must adhere to the director's timetable. (1/1/02)
- P-8-4. Advisors shall be human resource professionals in job evaluation or selection depending on the action appealed. In the case of an advisory panel, the appellant will select one member from a list of qualified human resources professionals provided by the director. (1/1/02)
- P-8-5. If the appellant files a written position statement, it cannot exceed 10 pages. Written sworn statements or documents that support the appellant's position may be attached.
- P-8-6. The responding department shall then file a position statement. Any information relevant to the appeal must be available, subject to statute, to the appellant for inspection prior to the appellant's filing date for a position statement. The appellant must pay the reasonable cost of any copying. (7/1/02)
- P-8-7. The original and proper number of copies of all position statements and supporting documents must be filed with the director. Any materials that are not filed on time will be excluded from consideration of the merits of the appeal, unless they are late due to circumstances beyond the party's control.
- P-8-8. Confidentiality of examination materials. Examination data and documents will be filed in a sealed envelope with the director only. Such documents include, but are not limited to: test questions, scoring keys and scores or results. A list of documents sent under sealed envelope will be given to all appellants.
- A. Use or disclosure of the information outside the appeal review process is strictly prohibited. Confidentiality of material in sealed envelopes shall be maintained throughout all phases of the review process, including preparation of any record for judicial review. The confidential material will be returned to the director after the completion of a panel review. The director will return the contents to the responding party if no request for judicial review is filed.
- P-8-9. Oral argument. No party is entitled to oral argument; it is discretionary with the director or advisor(s). Either party may request oral argument in writing, on or before the date on which the position statement is due. A request must be granted before oral argument is permitted. The director or advisor(s) may request oral argument on any issue raised regardless of whether any party has requested it.
- A. The director or advisor(s) will notify all parties of the date, time, and place. No continuances will be granted. All parties may speak. Each party is allowed 15 minutes. The appellant speaks first, followed by the opposing side. No witnesses or new written material will be allowed. Questions asked by the director or advisor(s) are outside the 15 minutes allotted to a party.
- B. Oral argument will be tape recorded unless all parties agree in writing to waive the recording. The tape recording will be destroyed 90 days after the decision is issued if no notice of judicial review is received.
- P-8-10. The director must issue a written decision no later than 90 days after receipt of the appeal. The action may be overturned only if found to have been arbitrary, capricious, or contrary to rule or law. Failure to issue a decision within the time limit will cause the initial decision to be upheld. The matter appealed must be resolved within the 90 days, after which, the director loses jurisdiction and does not have the authority to extend the time period.



P-8-11. Decisions of the director are subject to judicial review in accordance with statute.

P-8-12. An appellant may withdraw an appeal at any time prior to the final decision. If the remedy is granted during the course of the appeal, the appeal will be considered moot and dismissed with prejudice.

### **Performance Pay System Dispute Resolution Process**

P-8-13. The dispute resolution process is an open, impartial process that is not a grievance or appeal. No party has an absolute right to legal representation, but may have an advisor present. The parties are expected to represent and speak for themselves. (7/1/01)

P-8-14. Only the following matters are disputable: (7/1/01)

- A. the individual performance plan, including lack of a plan during the planning cycle;
- B. the individual final overall performance evaluation, including lack of a final overall evaluation;
- C. the application of an department's performance pay program to the individual employee's plan and/or final overall evaluation; and,
- D. full payment of the performance salary adjustment. (5/2/04)

P-8-15. The following matters are not disputable: (7/1/01)

- A. the content of a department's performance pay program;
- B. matters related to the funds appropriated;
- C. the performance evaluations and performance salary adjustments of other employees; and, (5/2/04)
- D. the amount of a performance salary adjustment, unless the issue involves the application of the department's performance pay program. (5/2/04)

P-8-16. Every effort shall be made by the parties to resolve the issue at the lowest possible level in a timely manner. Informal resolution before initiating the dispute resolution process is strongly encouraged. (7/1/01)

P-8-17. Dispute resolution process. Only the issue(s) as originally presented in writing shall be considered throughout the dispute resolution process. (7/1/01)

- A. Internal Stage. The first stage is the department internal dispute resolution process. Each department shall continually communicate and administer a detailed internal dispute resolution process that complies with the requirements of, and is approved in advance by, the director. A description of the process must be communicated to all employees and must include:
  - 1. the time limits and the process for filing a written request for review of the issue(s) throughout the dispute resolution process;
  - 2. who will review and decide the issue(s). The appointing authority is the decision maker unless it is delegated in writing and publicized in advance. Employees must be notified of the authorized decision maker for their disputes.
  - 3. the time limits for issuing the final written department decision; and,
  - 4. any other specific requirements established by the director.

A department's decision on issues involving an individual performance plan or evaluation

concludes at the internal stage and no further recourse is available. For issues disputable at the external stage, the employee shall be given written notice, including deadlines and address for filing, and the requirement to include a copy of the original written dispute and the department's final decision.

- B. External Stage. This stage is administered by the director. Only those original issues involving the application of the department's performance pay program to the individual performance plan and/or evaluation, or full payment of a performance salary adjustment may advance to this stage. (5/1//04)
  - 1. Within five working days from the date of the department's final decision, an employee may file a written request for review with the director at the address specified in R-8-40.
  - 2. The request for external review shall include a copy of the original issue(s) submitted in writing and the department's final decision.
    - a. The director or designee shall retain jurisdiction but may select a qualified neutral third party to review the matter. The director or designee shall issue a written decision that is final and binding within 30 days. (7/1/02)

P-8-18. The scope of authority of those individuals making final decisions throughout the dispute resolution process is limited to reviewing the facts surrounding the current action, within the limits of the department's performance pay program. These individuals shall not substitute their judgment for that of the rater, reviewer, or the department's dispute resolution decision maker if an issue is being reviewed at the external stage. Further, these individuals shall not render a decision that would alter a department's performance pay program. (7/1/01)

- A. In reaching a final decision, these individuals have the authority to instruct a rater(s) to:
  - 1. follow a department's performance pay program;
  - 2. correct an error; or,
  - 3. reconsider an individual performance plan or final overall evaluation.

- B. These individuals may also suggest other appropriate processes such as mediation.

P-8-19. Retaliation against any person involved in the dispute resolution process is prohibited. (7/1/01)

### **Director's Review Process**

P-8-20. An applicant or employee may attempt to informally resolve a disagreement for matters that are not otherwise covered in this chapter by contacting the department within 5 days of receipt of the notice or knowledge of the action, e.g., removal of name from an eligible list, rejection of an application, violation of FLSA or FMLA. (7/1/02)

P-8-21. A request for review may be filed with the director within 10 days after receipt of notice or knowledge of the action. It must be in writing to the director and include the following: job title, department involved, name of the department representative spoken to during informal resolution attempts, the date of the conversation, the specific issue, and the reason it is believed the decision is arbitrary, capricious, or contrary to rule or law. (7/1/02)

- A. A request may also be filed for a director's review of a general matter that affects the overall administration of the state personnel system that is not otherwise covered by this chapter (except annual compensation survey, the granting of in-range salary movements, discretionary pay differentials, leave sharing, personal services contracts, and job evaluation system and actions). A director's decision in this type of review is subject only to a discretionary Board hearing. (5/2/04)

P-8-22. The director will select an investigator to review the matter.

P-8-23. The investigator's written report of findings or director's decision will be issued within 90 days from receipt of the written request. The decision may be overturned only if found to be arbitrary, capricious, or contrary to rule or law. Both parties will receive a copy of the decision. If a decision is not issued within the time period, the initial decision is upheld. (1/1/02)

## **Chapter 9 Fair Employment Practices**

### **General Principles**

- R-9-1. It is to the benefit of the state to employ a diverse workforce that reflects the character of its general population to assist in providing effective services to citizens.
- R-9-2. The state is committed to special efforts to increase representation of the population throughout all levels of the state personnel system. The state will continue to attract and retain qualified persons representing the population as future changes occur.

### **Discrimination**

- R-9-3. Discrimination against any person is prohibited because of race, creed, color, gender (including sexual harassment), sexual orientation, national origin, age, religion, political affiliation, organizational membership, veteran's status, disability, or other non-job related factor. This applies to all employment decisions, including, but not limited to, those covered by C.R.S. 24-34-402.
- R-9-4. Standards and guidelines adopted by the Colorado Civil Rights Commission and/or the federal government, as well as Colorado and federal case law, should be referenced in determining if discrimination has occurred.
- R-9-5. The state prohibits discrimination against any person, including members of the public, applicants and employees. Each agency must notify applicants and employees of the policy prohibiting discrimination. Any means or method reasonably designed to clearly communicate the information may be used.
  - A. Each agency will notify applicants and employees of the name, business address, and telephone number of the ADA coordinator. Appointing authorities and employees should consult with their departmental ADA coordinator concerning what constitutes a disability, reasonable accommodation, and undue hardship.
- R-9-6. If the Board finds that discrimination has occurred, it may order: cease and desist orders; hiring, reinstatement, or upgrading of employees, with or without back pay and compensation; referral of applicants for employment; admission or continuation of enrollment in on-the-job training; posting of notices and issuing orders as to the manner of compliance and corrective and/or disciplinary actions, as required; and, altering terms and conditions of employment as appropriate. This does not prohibit settlement by the parties at any stage of the proceedings.
- P-9-1. If the director finds the examination is a contributing factor to discrimination or unequal opportunity for all applicants, the director can set it aside, require its redesign, void an eligible list, or take other appropriate action.
- P-9-2. Repealed 5/1/04.

### **Diversity Plan**

- R-9-7. Diversity plan. In accordance with direction from the governor's office and the director, each agency shall develop an annual diversity plan and file it with the director. An agency's plan must be provided to the director in the format and by the date prescribed. The director shall report to the Board on an annual basis.
- R-9-8. The director and governor's office will develop a training program to assist agencies in implementing the state's diversity policy.
- P-9-3. The director will provide work force data to all agencies.

## **Disputes**

R-9-9. For any complaint on an action that violates the provisions of this chapter, refer to the "Dispute Resolution" chapter for further information.

## Chapter 10 Personal Services Agreements

P-10-1. The provisions in this chapter apply to any contract for services pursuant to C.R.S. 24-50-501 through 24-50-514 ("Part 5"), except for services and contracts exempted by the constitution. (1/1/02)

P-10-2. Definitions. In addition to the statutory definitions under C.R.S. 24-50-502, the following shall apply. (1/1/02)

- A. As used in Part 5 and in this chapter, the term "contract" does not include acquisitions where a commitment voucher (e.g., state contract, purchase order) is not required by Fiscal Rule 2-2 of the state controller. Such minor acquisitions of services do not implicate the state personnel system as a whole and are not subject to review. Commitments to acquire services shall not be artificially divided to avoid review. Departments must develop a method for retrieval of payment vouchers for personal services obtained within the scope of this exemption.
- B. As used in Part 5 and in this chapter, the term "independent contractor" (synonymous with contractor), is a firm or individual who is responsible to the state for the results of certain work, but is not subject to the state's control as to the means and methods of accomplishing those results. For purposes of determining independent contractor status, the director will apply the criteria set forth in the fiscal rules of the state controller.

P-10-3. Personal Services Contracts Implicating the State Personnel System. Personal services contracts shall be approved under C.R.S. 24-50-503 if all of the following are met. (1/1/02)

- A. Pursuant to C.R.S. 24-50-503(2), the department must submit, along with the proposed contract, written information to factually verify that no certified employee will be directly or indirectly separated as a result of the contract; and,
- B. The proposed contract meets the cost savings requirements set forth in C.R.S. 24-50-503(1)(a) through (1)(f).
  - 1. A proposed contract meets the quality standards of C.R.S. 24-50-503(1)(b) when the following are met:
    - a. the proposed solicitation includes the submittal of third party references for consideration as part of the award evaluation process;
    - b. the proposed contract has provisions for periodic evaluations to measure performance; and,
    - c. the contract contains minimum qualifications for the people performing the work that meet or exceed the state's qualifications for similar work performed in the state personnel system.

P-10-4. Personal Services Contracts Not Implicating the State Personnel System. A contract that results in the removal of any portion of a certified employee's duties is considered minor and does not implicate the state personnel system if there is no adverse impact on the pay, status, or tenure of such certified employee. Departments shall document compliance with this requirement. To ensure that contracts approved under C.R.S. 24-50-504 do not adversely implicate the state personnel system as a whole, the following shall apply. (1/1/02)

- A. "Scope" differences under C.R.S. 24-50-504(2)(a) apply to contracts for personal services subject to all of the following:
  - 1. the department demonstrates a business need to continuously retain a limited amount of outside contractors for such service, including the following: (i) enabling

- the program to react on short notice to fluctuating demand or temporary staff shortages; (ii) exposing state employees to private sector methods or experiences; or, (iii) uncertainty in projected workload reasonably indicates that creation of additional permanent positions poses a risk of foreseeable layoffs; and,
    2. the amount of contracted FTE relative to program FTE shall not exceed 5% unless total program funding grows by more than 5% in any fiscal year, in which case the relative percentage of FTE may be increased by the percentage increase in total program funding for that fiscal year.
  - B. For changed “policy objectives” under C.R.S. 24-50-504(2)(a), the department must demonstrate that contracting is for a purpose substantively distinct from that previously or currently performed by employees in the state personnel system such that contracting meets an important policy need historically not filled by state employees and conversion to state employees would defeat this policy.
  - C. For purposes of determining whether a service agreement exists under C.R.S. 24-50-504(1)(d), the director shall consider whether the predominant purpose of the contract is the acquisition of labor, skills, creativity, or judgment.
  - D. For requests involving equipment, materials, facilities, or support services under C.R.S. 24-50-504(2)(f), the director will consider the following: (7/1/02)
    1. whether the demand for services in a particular geographic area is insufficient to justify investment; and,
    2. whether it is impractical or cost effective for departments in such geographic areas to share the costs to meet the total demand upon the state in that geographic area.
  - E. For requests of a temporary, urgent or occasional nature under C.R.S. 24-50-504(2)(h), the following shall apply. (7/1/02)
    1. Urgent means a contract for services that meets a compelling need for immediate action to protect the health, welfare, or safety of people or property, or to meet an externally imposed deadline beyond the department's control.
    2. Temporary means a contract that meets a need for a specific task or result for a finite period of time. Such contracts must state an ending date.
    3. Occasional means a service that is seasonal, irregular, or fluctuating in nature.
- P-10-5. Purchased Services. “Purchased services” contracts are permissible if they meet the statutory definition in C.R.S. 24-50-502(3). For purposes of the definition, the services for persons in the physical or legal custody of the state do not fall under this statute. (1/1/02)
- P-10-6. Waiver of Review. For purposes of C.R.S. 24-50-509, any approval granted under this provision remains valid from year to year so long as the department annually certifies that the facts supporting the original approval have not materially changed. Such certification must be made on forms specified by the director and is subject to verification that the requirements of C.R.S. 24-50-503 or 504 continue to be met. (1/1/02)
- P-10-7. Pre-Approval Prior to Competitive Procurement. All solicitations for services within the scope of this chapter must be submitted to the director for review and approval prior to award unless previously waived by the director in writing. Except as otherwise specified by the director, such advance approval avoids the necessity of routing final executed contracts to the director, provided the contracts comply with the original terms of the approved solicitation. (1/1/02)
- P-10-8. Use of Purchase Orders Issued Against Price Agreements. Each purchase order or contract for services acquired against an authorized price agreement must be approved by the director unless the agreement has been approved in advance, and the proposed acquisition complies with any

conditions established by the director for the use of the price agreements. (1/1/02)

P-10-9. Annual Reporting. Pursuant to C.R.S. 24-50-510, reports on any aspect of this program must be provided to the director when requested, but no less frequently than September 30 of each year. (1/1/02)

P-10-10. Veterans Preference. Pursuant to C.R.S. 24-50-511, consideration shall be given to contractors utilizing a preference for hiring veterans of military service in the following manner: (1/1/02)

- A. In all solicitations for personal services, whether by competitive sealed bidding or competitive sealed proposals ("RFP") as defined by law, any tie between offerors shall first be broken by awarding the contract to the offeror utilizing the greatest quantitative (numerical) preference for veterans in hiring offeror's employees.
- B. Solicitations for personal services done by competitive sealed proposal ("RFP") may include as a scored criterion the extent and quality of any preference for veterans of military service given by offeror in the hiring of offeror's employees. The relative weight assigned such criterion for veterans preferences in personal services contract solicitations, consistent with the preference given by the state personnel system to veterans in the hiring of state employees, shall not exceed 5%.

P-10-11. Mandatory Clause. All contracts must contain the following capitalized clause concerning independent contractors: (1/1/02)

THE CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF THE CONTRACTOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX WITHHOLDING, INCLUDING ALL FEDERAL AND STATE INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID PURSUANT TO THIS CONTRACT. CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE CONTRACTOR OR A THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. CONTRACTOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. THE CONTRACTOR SHALL PROVIDE AND KEEP IN FORCE WORKER'S COMPENSATION (AND SHOW PROOF OF SUCH INSURANCE) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF THE CONTRACTOR, ITS EMPLOYEES AND AGENTS.

P-10-12. Required Form. A *Certification for Personal Services Agreements* form must accompany all contracts. (1/1/02)

P-10-13. Six-Month Limitation. For purposes of exemption from review under C.R.S. 24-50-513, the following shall apply. (1/1/02)

- A. A person may work as a state temporary employee six months and subsequently be retained on a contractual basis by the same or a different program to perform completely different duties than those originally performed as a temporary employee.
- B. Written certification that the contract is not expected to recur on a regular basis must be placed in the department's contract file.



## **Chapter 11 State Benefit Plans**

### **General Principles**

- P-11-1. The state reserves the right to add, modify, or discontinue the state group benefit plans as deemed necessary. (5/30/03)
- P-11-2. The terms and conditions of the state group benefit plans are controlled by group master contracts or plan documents. In the event of a conflict between these procedures and the group master contracts, the contracts will prevail. In the event of a conflict with federal or state laws, the governing laws will prevail. (5/30/03)

### **Employer Responsibilities**

- P-11-3. All departments shall administer the state group benefit plans in accordance with the group master contracts, plan documents, Internal Revenue Code, law, procedures, and written directives. When a department fails to timely notify vendors of employee terminations from the state group benefit plans, it is responsible for payment of total premiums (both state and employee contributions). (5/30/03)
- P-11-4. The Department of Personnel will create and make available group benefits materials to departments. All departments will distribute the state group benefits materials to newly hired employees within five working days of hire and to all eligible employees prior to each annual open enrollment period. This applies to all departments, including those that offer their own separate group benefit plans. (5/30/03)
- P-11-5. All departments must maintain records of all state group benefit enrollment forms and all supporting documentation pertaining to the state group benefit plans selected by each of their employees. (5/30/03)

### **Eligibility**

- P-11-6. Employees and their dependents must meet the eligibility requirements as defined in state statutes to qualify for enrollment in the state group benefit plans. Employees and their dependents are not eligible to enroll or continue enrollment in the state group benefit plans when they cannot meet the eligibility criteria as defined in law, procedure, and written directives. (5/30/03)

### **Enrollment**

- P-11-7. The director shall establish an annual open enrollment period when eligible employees can enroll, modify, or terminate enrollment in the state group benefit plans for themselves and each eligible dependent, subject to the terms and conditions of the group master contracts, plan documents and as defined in law, procedure, and written directives. (5/30/03)
- P-11-8. Enrollment by employees and their dependents in the state group benefit plans is restricted to the annual open enrollment period and certain other eligible events as defined in law, procedure, and written directives. Employees who do not enroll themselves and their eligible dependents during these times may not enroll until the next annual open enrollment period. (5/30/03)

### **Employee Responsibilities**

- P-11-9. Initial enrollments, changes to enrollments, and terminations of enrollment in the state group benefit plans require that employees complete, sign, and date the appropriate state forms in accordance with criteria as defined in law, procedure, and written directives. Employees shall provide any and all necessary supporting documentation. The employee's signature on the state forms and supporting documentation attests that the information provided is true and complete, authorizes the appropriate employee contribution or authorizes the department to stop employee contributions. (5/30/03)

P-11-10. It is unlawful for any employee, or dependent to provide false, incomplete, or misleading facts or information on any state group benefit enrollment form, affidavit, claim, or other document for the purpose of defrauding or attempting to defraud the State of Colorado. Any employee or dependent who provides false, incomplete, or misleading facts or information on any benefit enrollment form, affidavit, claim, or other document for the purpose of defrauding or attempting to defraud any state group benefit plan shall be reviewed by the director. If the director has reasonable suspicion to believe that an employee or dependent has defrauded or attempted to defraud any state group benefit plan, coverage shall be terminated, and the employee or dependent may be denied future enrollment and may be subject to other action. (5/30/03)

P-11-11. Once enrolled in the state group benefit plans, employees must verify the accuracy of employee contributions and enrollment elections for each plan selected and must notify their department of any corrections within 10 days of the first payroll contribution. When an employee fails to notify the department of an incorrect employee contribution or other error within the specified time period, the employee and dependents must maintain enrollment in the existing state group benefit plans selected until the next annual open enrollment period or until the employee or dependents no longer meet eligibility criteria. (5/30/03)

P-11-12. Once enrolled in the state group benefit plans, employees and dependents are responsible for complying with law, procedures, group master contracts, written directives, and plan documents. (5/30/03)

P-11-13. Any eligible event that permits enrollment, modification, or termination of enrollment on an after tax or pre-tax basis must be reported on the appropriate state forms accompanied by supporting documentation within 31 days of the event. The effective date of the change is determined in accordance with the Internal Revenue Code. If notification of the eligible event is not made within 31 days, such enrollment or modification of enrollment may be permitted only during the next annual open enrollment period. (5/30/03)

### **Effective Date Of Coverage**

P-11-14. Coverage in the state group benefit plans is effective on the first day of the month following the date of hire unless otherwise specified by the applicable group master contracts or written directives. (5/30/03)

### **Termination Of Coverage**

P-11-15. Coverage in the state group benefit plans is terminated on the last day of the month of employment. (5/30/03)

### **Employee And State Contributions**

P-11-16. To enroll in certain state group benefit plans, employees must elect to have contributions deducted on a pre-tax or after tax basis as defined by the Internal Revenue Code, the State of Colorado Salary Reduction Plan, law, procedure, and written directives. The employee's pre-tax or after tax contribution is deducted from the employee's paycheck or, under certain circumstances, by personal payment for the selected state group benefit plans. The state contribution is added to the employee contribution to complete the total premium for the selected state group benefit plans as defined in law, procedure, and written directives. (5/30/03)

P-11-17. When contributions for the state group benefit plans are deducted on a pre-tax or after tax basis, enrollment in, modifications to, and terminations from the enrolled employee's state group benefit plans must be reported on appropriate state forms accompanied by supporting documentation submitted to the employee's department within 31 days. The effective date is determined in

accordance with the Internal Revenue Code, the State of Colorado Salary Reduction Plan, law, procedure, and written directives. (5/30/03)

P-11-18. An enrolled employee who works or is on paid leave one or more regularly scheduled workdays in a month is eligible for the full state benefit contribution.

P-11-19. Refunds for employee and state contributions are subject to plan limitations and as defined in law, procedure, and written directives. (5/30/03)

### **Pay Back Requirements**

P-11-20. When there is a difference in the employee's contribution compared to the actual contribution due, the difference is paid by the employee. (5/30/03)

### **Flexible Spending Accounts**

P-11-21. Employees enrolled in the health care or dependent day care flexible spending accounts are required to comply with the Internal Revenue Code, State of Colorado Salary Reduction Plan, law, procedure, and written directives. (5/30/03)

### **Leaves**

P-11-22. While on leave without pay, employees may continue enrollment in certain state group benefit plans for a period of up to six months in accordance with criteria defined in written directives. The total premium is paid by the employee to the employing department by no later than the time period established in written directives. If the employee fails to pay the total premium by the due date while on leave without pay, coverage will be terminated in the affected state group benefit plans. Re-enrollment is subject to conditions of the annual open enrollment period, law, procedure, and written directives. (5/30/03)

P-11-23. While on voluntary furlough, employees may continue enrollment in certain state group benefit plans in accordance with criteria defined in written directives. The employee contribution is paid to the employing department by no later than the time period as established in written directives. The state contribution is paid in accordance with state law. If the employee fails to pay the employee contribution by the due date while on voluntary furlough, coverage will be terminated in the affected state group benefit plans. Re-enrollment is subject to conditions of the annual open enrollment period, law, procedure, and written directives. (5/30/03)

P-11-24. While on family/medical leave, employees may continue enrollment in certain state group benefit plans in accordance with criteria defined in law and written directives. The employee contribution is paid to the employing department by no later than the time period as established in written directives. The state contribution is paid in accordance with state law. If an employee fails to pay the employee contribution by the due date while on family/medical leave, coverage may be terminated. In the event any contributions are owed upon the employee's return to work, such contributions shall be collected from the employee. If the employee fails to return after the leave, any contributions due will still be recovered except for some circumstances beyond the employee's control. (5/30/03)

P-11-25. While on short-term disability leave, employees may continue enrollment in certain state group benefit plans in accordance with criteria defined in written directives. The employee contribution is paid to the employing department by no later than the time period established in written directives. The state contribution is paid in accordance with state law. If an employee fails to pay the employee contribution by the due date while on short-term disability leave, coverage will be terminated in the affected state group benefit plans. Re-enrollment is subject to conditions of the annual open enrollment period, law, procedure, and written directives. (5/30/03)

## **Consolidated Omnibus Budget Reconciliation Act (COBRA) Continuation Coverage**

P-11-26. The COBRA election to continue enrollment in a state group medical plan, dental plan, and the health care flexible spending account must be offered by each department to eligible enrolled employees or dependents losing coverage due to COBRA Qualifying Events as defined in law, procedure, and written directives. All departments shall distribute the appropriate COBRA election materials to eligible enrolled employees and dependents losing coverage as defined in law, procedure, and written directives. (5/30/03)

## **Medicare**

P-11-27. Employees and dependents of active employees reaching age 65 must follow the criteria as defined in regulations, statutes, and written directives.

## **Conversion To Non-Group Coverage**

P-11-28. Upon termination of enrollment in certain state group benefit plans, employees or their dependents may convert from a group plan to a non-group plan as defined in law, procedure, plan documents, group master contracts, and written directives. (5/30/03)

## **Complaint And Appeal Procedures**

P-11-29. The resolution of complaints and appeals concerning those state group benefit plans that are regulated by the State of Colorado Division of Insurance must follow that group benefit plan's complaint and appeal review process. (5/30/03)

P-11-30. Complaints and appeals concerning those state group benefit plans that are not regulated by the State of Colorado Division of Insurance may be submitted in writing to the director (refer to "Dispute Resolution" chapter for address) within 60 days of the action. The director will issue a final decision within 90 days from receipt of the complaint or appeal. (5/30/03)

## **Employee Assistance Program**

P-11-31. Services provided. The Colorado State Employee Assistance Program (C-SEAP) is intended to address workplace issues and personal problems created by or associated with those workplace issues faced by state employees and employers, which may include, but are not limited to, counseling services, crisis intervention, consultations with supervisors and managers, facilitated groups, trainings and workshops. (5/30/03)

P-11-32. Eligibility guidelines. Beginning July 1, 2003, any state employee and any department may participate in the program. (5/30/03)

- A. The program may request the participation of other persons if necessary to provide effective assistance to the employee.
- B. The limit per employee is one six-session course of counseling in a 12-month period. At the discretion of the counselor, additional sessions may be authorized.

P-11-33. Funding sources. Beginning July 1, 2003, the program shall be funded by the state group benefit plans reserve fund, the risk management fund, or both, and any interest derived from the investment of said funds. (5/30/03)

## Chapter 12 Definitions

- P-12-1. Advisor. Individual who assists a party during a grievance or the performance pay system dispute resolution process by explaining the process, helping identify the issues, preparing documents, and attending meetings. (7/1/01)
- R-12-1. Agency. A unit of government expressly defined by law or created in accordance with the Administrative Reorganization Act of 1968. For purposes of these rules and procedures, synonymous with department.
- P-12-2. Allocation. Assignment of an individual position to the proper class.
- P-12-3. Announcement. The published notice of a vacancy for a position or class which will be filled on the basis of merit and fitness.
- P-12-4. Applicant. An individual who applies for employment in the state personnel system.
- P-12-5. Applicant Pool. A group of individuals who have applied for employment in the state personnel system.
- P-12-6. Base Pay. An employee's salary without premium pay.
- R-12-2. Board. The State Personnel Board as established in Article XII, Section 14, Constitution of the State of Colorado.
- P-12-7. Class. A group of positions whose essential character (general nature of the assignments) warrants the same pay grade, title, and similar qualifications for entry into the class.
- P-12-8. Class Conversion. Automatic movement of a current title and grade to a new title and grade.
- P-12-9. Class Description. The official written description of a class series and its levels as issued by the Department of Personnel. (7/1/02)
- P-12-10. Class Placement. Portion of a system maintenance study in which all affected positions are individually placed in the proper new class.
- P-12-11. Class Series. A group of classes engaged in the same kind of occupational work but representing different levels.
- P-12-12. Competencies. Observable, measurable patterns of knowledge, skills and abilities, behaviors, and other characteristics that employees need to successfully perform work-related tasks. (7/1/01)
- R-12-3. Day. Calendar day unless otherwise specified.
- R-12-4. Department. One of the principal departments defined in the Administrative Reorganization Act of 1968 and institutions of higher education. In addition, for purposes of these rules and procedures, the term applies to both departments and agencies.
- R-12-4.1. Department's Performance Pay Program. Each department's or agency's implementation of the State's performance pay system which consists of three components: performance management, performance-based pay, and dispute resolution. (5/1/01)
- R-12-5. Director. The State Personnel Director as established by the State Personnel System Act. This position is also the executive director of General Support Services. Synonymous with the delegated position in the Human Resource Services division within the Department of Personnel.

R-12-6. Disciplinary Suspension. A type of disciplinary action in which an employee is not allowed to work and is not paid for a specified period of time.

R-12-7. Dismissal. Disciplinary termination of employment.

R-12-8. Downward Movement. Change to a different class with a lower maximum, e.g. non-disciplinary or disciplinary demotions, individual allocations, system maintenance including class placement, or the annual total compensation survey.

A. For movement from one pay plan to another, comparison is made between the maximums. (5/1/01)

R-12-9. Eligible List. A list of persons, in rank order, who have passed an examination and may be considered for appointment.

R-12-10. Employee. An individual who occupies a full-time or part-time position in the state personnel system.

R-12-11. Employment Lists. Statutory term that includes promotional and open-competitive eligible lists and reemployment lists.

R-12-12. Examination. A test or group of tests used to screen and rank applicants on the basis of merit and fitness. The process concludes with the establishment of an eligible list.

R-12-13. Exempt Employee. One who is not eligible for overtime.

P-12-13. Repealed 7/1/02.

P-12-13.1. Full-Time. A position scheduled and budgeted for 2080 hours per fiscal year. Any schedule for less than 2080 hours is part time. (8/2/04)

R-12-14. Good Cause. Any cause not attributable to a party's act or omission, including a schedule conflict with another proceeding, serious family emergency, unusually complex case, actively engaged in settlement with probable resolution.

P-12-14. Health Care Provider. For purposes of family/medical leave only, a doctor of medicine or osteopathy, dentist, podiatrist, clinical psychologist, optometrist, chiropractor limited to manual manipulation of the spine to correct a subluxation as demonstrated by x-ray, nurse practitioner, nurse mid-wife, Christian Science practitioner listed with First Church of Christ, Scientist in Boston, and clinical social worker. Health care providers must be authorized to practice and be performing within the scope of their practice.

P-12-15. Job Description. The official document summarizing the primary duties and responsibilities assigned to a position by the appointing authority.

P-12-16. Job Evaluation System. System of classes and class descriptions developed by the director. All positions are placed in the system during a system maintenance study or are allocated when an assignment changes or a position is created.

P-12-17. Job Profile. Listing of the minimum requirements for entry into a class or position. (1/1/02)

P-12-18. Repealed 7/1/01.

R-12-15. Laid Off. Involuntary non-disciplinary separation from the state personnel system and, if certified, placement on a reemployment list.

R-12-16. Lateral Movement. Change to a different class or position with the same maximum, e.g., transfers, individual allocations, system maintenance studies including class placement, or the annual total compensation survey.

A. For movement from one pay plan to another, comparison is made between the maximums.  
(5/1/01)

R-12-17. Layoff. Process of involuntarily separating an employee due to abolishment of the position for lack of work, lack of funds, reorganization, or displacement by another employee exercising retention rights.

R-12-18. Non-Permanent Position. A position established for a six-month period or less. It may be a full-time or part-time work schedule. Synonymous with “temporary”.

P-12-19. Party or Parties. A person appealing and any person or department against whom an appeal is filed.  
(7/1/02)

P-12-20. Pay Grade. A number used to identify a pay range assigned to a class. It reflects the minimum and maximum base salary rates for work in a specific class. Individual salaries vary within the ranges depending on individual movements in accordance with these provisions. Synonymous with pay level, range, or band. (9/1/01)

P-12-21. Pay Plans. Listing of all pay grades and their corresponding ranges for occupational groups.

P-12-22. Pay Rate. Actual base pay amount within a pay grade.

P-12-23. Repealed 1/1/00.

R-12-19. Permanent Position. A position which is carried on the staffing pattern in excess of six months or on an annual, seasonal basis. It may be a full-time or part-time work schedule.

R-12-20. Position. An individual job, as defined by an appointing authority, within the state personnel system.

R-12-21. Reemployment. The right of an employee to be returned or rehired to the class from which separated by layoff.

P-12-24. Reemployment List. List of certified employees who were involuntarily terminated or demoted due to layoff. (1/1/00)

R-12-22. Resignation. Voluntary separation from the state personnel system.

R-12-23. Retention Credit. Total time credited to an employee in determining retention rights for a layoff situation.

R-12-24. Retirement. Separation of an employee from the state personnel system who is eligible to retire under the provisions of the Public Employees Retirement Association.

P-12-25. Saved Pay Rate. Temporary means of maintaining current base pay during certain situations that accommodate base pay amounts between the maximum of a pay grade and a statutory lid. (7/1/01)

P-12-26. Serious Health Condition. For purposes of family/medical leave, an illness, injury, impairment, physical or mental condition that requires inpatient care in a hospital, hospice, or residential medical care facility or continuing treatment by a health care provider. Continuing treatment is a period of incapacity of more than three calendar days, pregnancy, a chronic serious health condition, or permanent long-term condition for which there is no treatment but the patient is under supervision, or multiple treatments without which a period of incapacity would result. (1/1/00)

R-12-25. Service Date. Date from which continuous service is computed for purposes of determining seniority and years of service.

R-12-26. Sexual Harassment. Quid pro quo sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or reject of such conduct is used as the basis for an employment decision. Hostile work environment sexual harassment is any harassment or unequal treatment based on sex, even if not sexual in nature, which results in unreasonable interference with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

P-12-27. Special Qualifications. Unique job requirements, in addition to the minimum requirements, necessary for a specific position. (1/1/02)

R-12-27. Status. Categories that determine the rights of an employee under the state personnel system, i.e., probationary, trial service, certified, conditional, provisional, and temporary.

P-12-28. Survey Class. A benchmark class used to collect market data and determine salary adjustments.

P-12-29. System Maintenance Study. The process used to determine classes and/or pay grades and to properly place all affected positions into new classes. It includes class placement.

R-12-28. Tenure. Combination of rights which vest in a certified employee by virtue of certified status, seniority, and years of service.

R-12-29. Termination. Separation of an employee from the state personnel system by resignation, retirement, layoff, dismissal, or death.

P-12-30. Repealed 7/1/01.

P-12-31. Treatment. For purposes of family/medical leave, examination to determine if a serious health condition exists, subsequent exams to evaluate the condition, and a course of prescriptive medication or therapy requiring special equipment. Routine exams or treatments that do not require the intervention or continuing supervision of a health care provider are excluded.

R-12-30. Unclassified Position. A position in state government that is not covered by the state personnel system.

R-12-31. Upward Movement. Change to a different class with a higher maximum, e.g., promotions, individual allocations, system maintenance including class placement, or the annual total compensation survey.

A. For movement from one pay plan to another, comparison is made between the maximums. (5/1/01)